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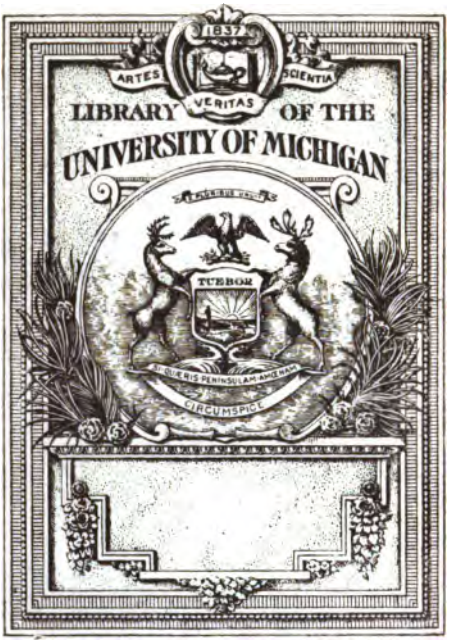
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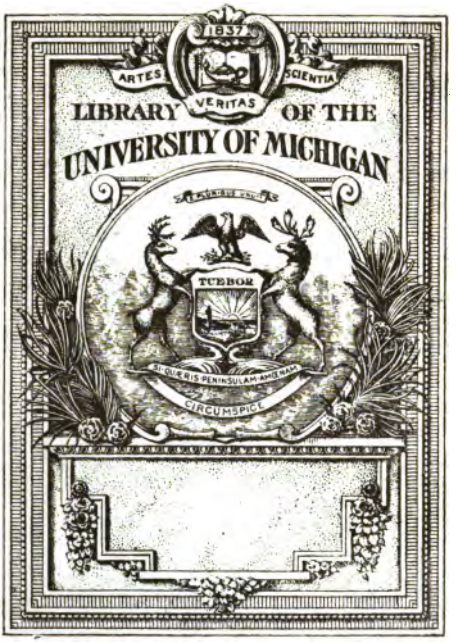
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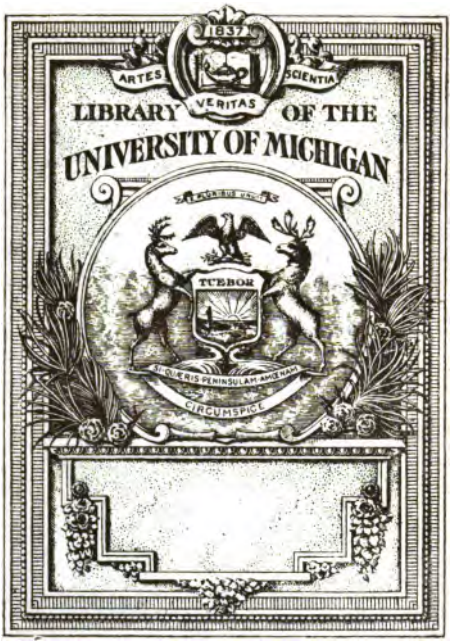
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Manwood, John

Manwood's Treatise OF THE Forest Laws:

SHEWING

Not only the LAWS now in Force, but the Original of FORESTS, what they are, and how they differ from Chases, Parks, and Warrens; with all such Things as are incident to either:

TOGETHER WITH

The proper TERMS of ART, collected out of the Common and Statute Laws of this Realm; as also from the *Assises* and *Iters* of *Pickering* and *Lancaster*, and several other ancient and learned Authors.

Treating also of the Office of Agistors, Beadles, Foresters, Keepers, Rangers, Verderors and Woodwards, and of the Courts of Attachment, *&c.* With all the Variety of CASES relating to Forests, Chases, Parks, and Warrens; and all the LAWS concerning the Game made, adjudged or repealed, since the Year 1665.

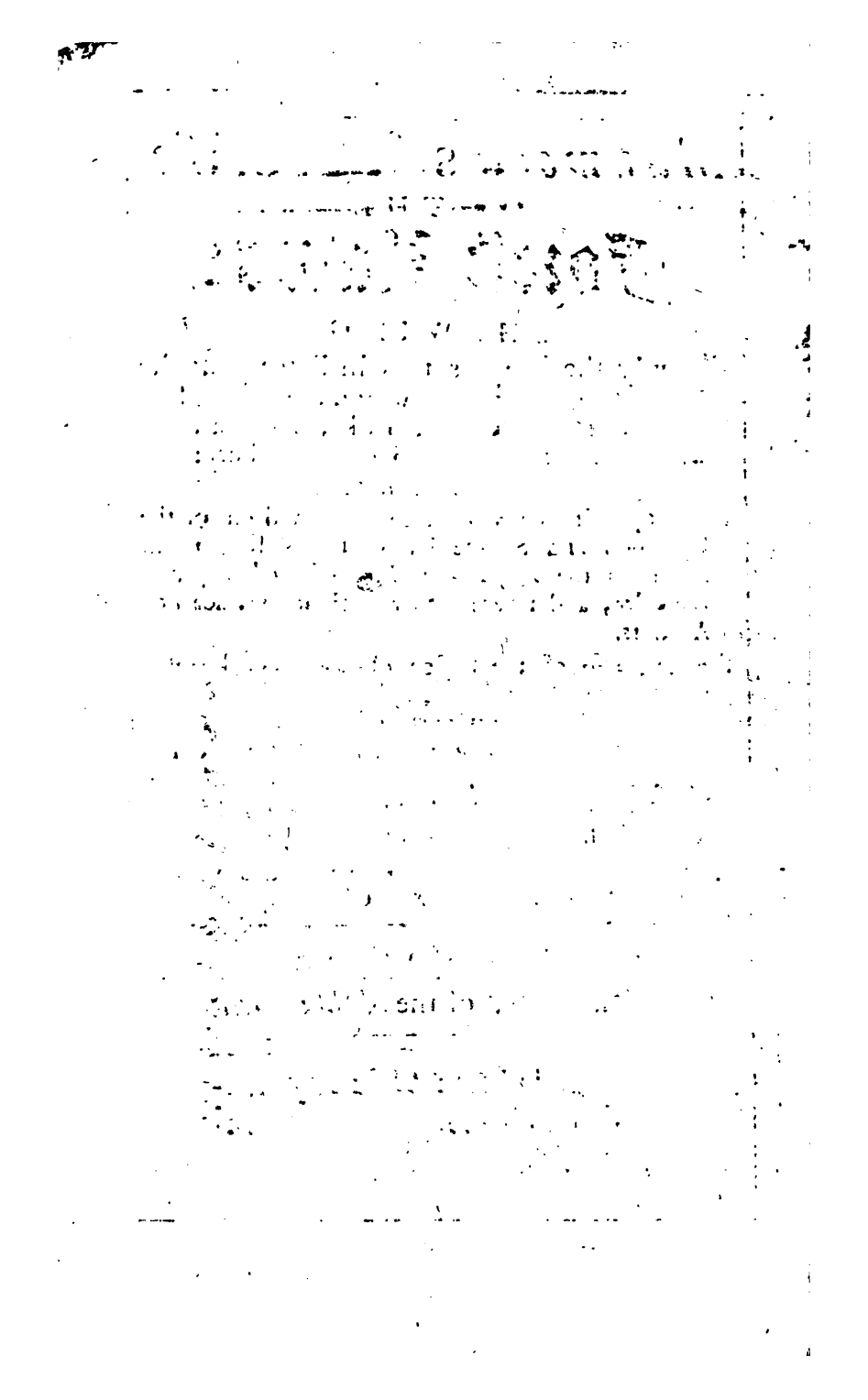
The whole digested under proper Titles in an ALPHABETICAL ORDER.

The Fourth Edition, Corrected and Enlarged.

By William Nelson, of the *Middle-Temple*, Esq;

In the *SAVOY*:

Printed by E. Nutt, (Executrix of J. Nutt, Assignee of *Edward Sayer* Esq;) for B. Linsott at the *Cross-Keys*, R. Gosling at the *Mitre* and *Crown*, J. Pemberton at the *Buck* and *Sun*, all in *Fleet-street*; and T. Ward in the *Inner-Temple-Lane*. 1717.



THE PREFACE.

THIS Treatiſe of the Foreſt-Laws was firſt publiſhed about the later End of the Reign of Queen *Elizabeth*, and hath been ſo well received as to admit ſeveral Impreſſions; but 'tis now ſo very ſcarce, that it may be very neceſſary to ſend it (once more) to the Preſs, for 'tis the only valuable Book written on that Subject; the Author having peruſed the Records of the *Aſſiſes* of the Foreſt of *Sherwood*, kept in *Nottingham Caſtle*, and the Proceedings of the *Iters* of the Foreſts of *Pickering* and *Lancaſter*, out of which he hath extracted many uſe-

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ful Things, not to be found in any other Law-Book whatsoever.

I have thought fit to make some Alterations in the *Orthography*; for our Language being very much refined since the Author wrote, which is now above One hundred years, I thought it proper to express his Matter in Words more adapted to the present Times, but without the least Alteration of the Sense, which I have been so nicely scrupulous in observing, that in many Places I have transposed whole Sentences and Paragraphs to make the same Matter cohere, and that it might be the more clearly understood.

To this Impression there are added all the Judgments and Resolutions in the *Assises* and *Iters* of the Forests of *Dean*, *Waltham*, *Windsor*, &c. and all other Cases relating to *Forests*, *Chases*, *Parks*, *Warrens*, and *the Game*, published or adjudged since the Year 1641; and the whole is divided into several Titles, in an Alphabetical Order, which

which is a moſt approved Method for the ready finding any thing in the Book; under which Titles, and to ſuch only as they properly relate, I have placed the ſeveral Notes of the *Aſſiſes* and *Iters* of *Pickering* and *Lancaſter*, the ſeveral Judgments and Entries of thoſe *Aſſiſes*, and other Judgments taken out of the Records of the Foreſts; together with the Petition of the Biſhop of *Lichfield* and *Coventry* againſt the Juſtices of the Foreſt.

And, as an Appendix to the whole, I have added all the Laws of *Canutus*, the Charter and Ordinances, and all other Statutes relating to Foreſts, Parks and Chaſes, in order of Time as they were made; ſome of which were printed in a confuſed manner at the Beginning, and ſome as improperly at the End of the laſt Edition.

A

A TREATISE OF THE Foreſt Laws, &c.

Agiſtment in Foreſts.

See { *Charge, in Chief Juſtice*, 56. 57. 64. *Common* 64. *Pannage* 11. *Appendix, Ch. Foreſtæ*, 9.

1. THE Word *Agiſtment* ſignifies the feeding Cattle with Herbage; 'tis derived from *Agito*, to drive or to feed, and the Lawyers, by adding the Letter S, have made it a Term of Art.

2. From hence comes the Word *Agiſtator* or *Agiſtor*, who is an Officer that taketh Beaſts to Paſture within the Foreſt; and this, my Lord *Coke* tells us, comes from the *French* Word *Gyſer*, *i. e.* to lie down, becauſe the Cattle, which feed there, are *Levant* and *Couchant*: He likewiſe tells us, that this Officer is conſtituted by the King's Letters Patent, and that his Office conſiſts *Agiſtando, recipiendo, imbreviando & certificando*; and that there are Four in Num-

ber in ſuch Foreſts where there is any Pannage, 4 *Inſt.* 293.

3. *Agiſtment* is of Two Sorts; *viz.* of the Herbage of Woods, Lands and Paſtures; and of Woods alone, that is, of the Maſts of the Trees, which is properly call'd *Pannage.*

4. For where the King hath any Foreſts, he hath there Demeſne Woods and Lands which are encloſed; he hath alſo *Waſte* Ground not encloſed, but lies open and in common for the Benefit of the Inhabitants of the Foreſts; and 'tis the Buſineſs of the *Agiſtors* to look after thoſe Woods and Lands, and to receive and take in the Cattle of ſuch Perſons who dwell within the Foreſt, who are to pay for the Herbage of ſuch Cattle as are commonable within a Foreſt: And becauſe theſe Officers are anſwerable to the King, as well for the Rule and Government of theſe Places, as for the Money and Profit which ſhall ariſe or be made thereof, they are called the Kings *Agiſtors* of the Foreſt.

5. But *Agiſtment*, in the proper Signification of the Word, is the Herbage of Land or Woods, or the Money received or due for the ſame. And of this Opinion was Mr. *Hesket*, in his Reading on the Laws of the Foreſt; *viz.* That the Paſture or Herbage of any Ground, or the Money that is taken for the ſame, is properly call'd *Agiſtment. Heſket, fo.* 48.

6. This appears by the Book of *Entries*, where an Action of Treſpaſs was brought for breaking and entring the Plaintiff's Cloſe in *Dale*, and ſpoiling and eating his Paſture there with Cattle, *&c.*

7. The Defendant pleaded not Guilty, as to the breaking the Cloſe; and as to the ſpoiling and eating his Paſture, he juſtified, that one *I. S.* was ſeiſed of the ſaid Cloſe in Fee *tempore quo, &c.* and that the Defendant, by the Appointment of the ſaid *I. S.* did put his Cattle therein to *agiſt*, paying unto the ſaid

ſaid *I. S.* for the *Agiſtment* of every Beaſt there, *Three Half-pence* for every Week, *&c.* By which it appears, that the Paſture of the Ground, and the Money for the ſame, are called *Agiſtment*. *Lib. Intration. fo.* 549.

8. So in the ſame Book of *Entries*, an Action of Debt was brought againſt the Defendant for *agiſting* his Cattle in the Plaintiff's Land; which likewiſe proves, that as well the *Paſturing* the Cattle, as the Money for the ſame, is call'd *Agiſtment*. *Lib. Intration. fo.* 149.

9. So in 22 *Aſſiſarum*, *placito* 84, it was the Opinion of *Mowbray*, *Banke* and *Thorp*, that if a Man hath *Common* by Specialty in a certain Place, and Cattle of his own to put in, he may not agiſt other Mens Cattle there to uſe his *Common*; ſo that they declared what *Agiſtment* is. 44 *Ed.* 3. *fo.* 25. *placito* 38.

10. And in *Dyer*, *fo.* 80. *placito* 56, the Biſhop of *Lincoln* made a Leaſe of the *Herbage* and *Agiſtment* of *Stow Park* unto *B*, which was confirmed by the Chapter; and that the Leſſee ſurcharged the Park with ſo many Cattle, that the Deer could have no Paſture there, by Reaſon of *agiſting* the Cattle, *&c.*

11. But thoſe who have a Right of Common in the Waſte of the Foreſt, and to agiſt their Cattle there, may not have *Agiſtment* for all Manner of Cattle; *viz.* not for Geeſe, Goats, Sheep or Swine, but only for ſuch Beaſts as are commonable.

Who ſhall agiſt in the King's Woods.

12. The King's Demeſne Woods and Lands muſt always be agiſted by his Foreſters and Verderors; this appears by the Aſſiſes of *H.* 2. call'd the *Aſſiſes of Woodſtock*; viz. *Item Rex præcipit quòd in quolibet Comitatu in quo habet Venationem, ponan-*

tur duodecim milites ad cuſtodiendum venationem ſuam; & viridarii cum Foreſtariis & quatuor militibus, ad agiſtandum Boſcos ſuos, & ad recipiendum pannagium ſuum.

13. By which it appeareth, that the agiſting the King's Demeſne Lands and Woods muſt be made by the Verderors, Foreſters and Agiſtors, that is, it muſt be made by their Privity and Conſent; and for that Purpoſe the *Swanimote* Courts were appointed by the Charter to be held at ſuch Days and Times when the agiſting the King's Demeſne Woods and Lands doth begin, that all thoſe Officers may meet there and join together about it; and when that expires they may meet again to receive the King's Money for *Agiſtments*, and likewiſe for agiſting the King's Woods and receiving the Pannage Money.

14. Such *Agiſtments* being made in Manner as aforeſaid, by the Privity of the Foreſters and Verderors, they muſt be enroll'd in the Verderor's Roll, which Roll muſt agree with the Agiſtor's Accompts; for the Verderor's Roll of the *Swanimote* Courts is the King's Record to charge his Agiſtors with the Receipts of his Money, which they, alone, are to receive for the *Agiſtment* of his Demeſne Lands and Woods, and they are only chargeable to the King to anſwer for the ſame.

15. This appears by the *Aſſiſes of the Foreſt of Pickering*, *fo.* 7, 8, 9. *Anno* 8. *Ed.* 3. where it was adjudged; *viz.* As concerning the Agiſtors of the King's Demeſne Woods and Lands, every Agiſtor in the King's Foreſt muſt bring before the Lord Chief Juſtice in Eyre of the Foreſt at the Juſtice-Seat, a true and juſt Accompt what Money he hath received for any *Agiſtment* or Pannage of the King's Woods and Lands, and the Entry thereof is thus; *viz. Rogerus M. unus Agiſtatorum iſtius Foreſtæ, reſpondebat de Agiſtamento Herbagii de Eaſt-*

wood, 3 *l.* 4 *s.* *&* *de pannagio porcorum de Eaſt-wood*, 23 *s.* 4 *d.*

16. It appears likewiſe by the Charter of the Foreſt, *articulo* 8. *viz.* *Et circa feſtum Sancti Martini in hyeme, quando Agiſtatores noſtri debent recipere pannagium noſtrum*, at which Time one of the three Swanimotes is to be held.

17. So that though the agiſting the King's Woods and Lands muſt be made by the Foreſters, Verderors, and Agiſtors, yet the *Agiſtors* alone are to receive the Money for Agiſtments and Pannage; and therefore they only are anſwerable to the King and not the Verderors or Foreſters; for the Verderors are only anſwerable to the King for the keeping of ſuch Things which concern the Foreſts.

18. And if any *Stranger*, living out of the Bounds of the Foreſt, drives his Cattle into the Foreſt, and agiſts them in the King's Woods and Lands, without the Licence or Conſent of the Officers of the Foreſt, or ſome other good Authority; then the Foreſters and Agiſtors ſhall take the ſaid Beaſts and appraiſe them, and deliver them to the Verderors to anſwer the King the Value thereof, for by the Laws of the Foreſt ſuch Beaſts are *forfeited.*

19. But if an *Inhabitant* within the Bounds of the Foreſt do agiſt his Beaſts in the King's Demeſne Woods and Lands in the Foreſt, without any Agreement with thoſe Officers, in ſuch Caſe the Beaſts ſo agiſted are not *forfeited*, but the Party is to be *fined* for ſuch Offence; and Mr. *Hesket*, *fo.* 23. and Mr. *Treherne*, *fo.* 8. are of Opinion, that ſuch Offence is determinable before the Verderors in their Court of Attachments.

20. Common of Herbage is Matter of Agiſtment, but no Man may agiſt his Beaſts within the King's Waſte of the Foreſt, but he who is an *Inhabitant* in the Foreſt, or who hath Common appendant or

appurtenant there, by Reaſon of his Land lying within the Foreſt.

21. And if a Man, who dwelleth within the Foreſt, and who hath Common in the Waſte there, will take the Beaſts of *Strangers* to agiſt, this is an Offence fineable to the King: The Form of the Entry of the Record is thus;

22. *Item præſentant quòd* A. B. *agiſtat averia extraneorum apud* F. *infra foreſtam, ad damnum Domini Regis & ad nocumentum ferarum: Et neſciunt quo Warranto: Ideo præceptum eſt Vicecomiti quòd venire faciat eum: Et poſtea teſtatum eſt per miniſtros foreſtarum quòd ipſe nihil habet infra foreſtam. Ideo pro agiſtamento prædicto in miſericordia, & remaneat agiſtamentum in manu Domini Regis. Itin. Pickering, fo.* 10.

23. *In Aſſiſa Foreſtæ Pickering, fo.* 10. there is the like Entry in the like Caſe of the Prior of St. *John*, for agiſting the Cattle of *Strangers* in the King's Foreſt, *ad nocumentum ferarum*, &c. *& ad damnum Domini Regis; & neſciunt quo Warranto. Ideo præceptum eſt Vicecomiti quòd venire faciat eum: Poſtea venit prædictus Prior & dicit quòd ipſe virtute chartarum progenitorum Regis nunc factarum prædeceſſoribus ſuis agiſtare in loco prædicto; & petit quòd poſſit admitti ad finem faciendum cum Domino Rege pro clameo ſuo faciendo, licèt primo die itineris non fecit: Et admittitur ad finem* 13 *s.* 4 *d. per plegios, R. & N.*

Who ſhall agiſt the Woods and Lands of other Men.

24. The Words *in Charta Foreſtæ, Articulo* 9. are, *viz. Unuſquiſque liber homo agiſtet Boſcum ſuum, &c.* That every Freeman, who hath any Woods or Lands within the Foreſt, either in Fee-ſimple or Fee-tail, for Term of Life or Years, either in his own Right, or in the Right of another, may, by himſelf, his Servants or Tenants, agiſt his

his Woods and Lands, and take the Herbage; and likewiſe the Pannage thereof, at ſeaſonable Times, by his Beaſts; but he muſt not agiſt Goats or Sheep there, though they are his own, without he hath a Licence ſo to do: *Quia præbent exilium ferarum Foreſtæ*; that is, They ſo taint the Paſture where they feed, that the Beaſts of the Foreſt will not depaſture there; ſo that they do, as it were, baniſh them from every Place where they are.

Of the Time of agiſting the King's Woods and Lands.

25. The *Time* for taking in Agiſtments of all manner of commonable Beaſts, in the King's Demeſne Woods and Lands, for *Herbage* only, doth begin 15 Days before *Midſummer*, and doth end on *Holy-Rood-Day*.

26. This appears by the Charter of the Foreſt, *Artieul.* 8. *viz. Tertium Swanimotum tenetur initio 15 dierum ante Feſtum Sancti Johannis Baptiſtæ, quando Agiſtatores noſtri conveniunt pro ſeopatione beſtiarum noſtrarum.*

27. This Court of Swanimote is held at that Time for Two Cauſes; *viz.* That Care may be taken throughout the Foreſt to preſerve the Wild Beaſts in their Time of Fawning, which is uſually 15 Days before *Midſummer*, and 15 Days after; and this is called the *Fence-Month*.

28. The other Cauſe is, That the Agiſtors of the King's Foreſts do then begin to agiſt the King's Demeſne Lands, Woods and Paſtures for *Herbage*, and for that Purpoſe do take in all manner of commonable Beaſts to depaſture the Herbage of the Foreſt; and this continueth till *Holy-Rood-Day*, which is 15 Days before *Michaelmas*, and then the next Court of *Swanimote* is to be held; this likewiſe appears by *Charta Foreſtæ, Art.* 8.

29. *Nullum Swanimotum de cætero teneatur in regno nostro, nisi ter in Anno; viz. in principio 15 dierum ante festum Sancti Michaelis, quando Agistatores nostri conveniunt ad agistandum Dominicos Boscos nostros, &c.*

30. In this Court, when the Agistors have done agisting for Herbage, then they receive the Money due for the same, in the Presence of the Foresters and Verderors, that they may record it in the Verderors Rolls.

31. And now at this Court the Agistors do begin to agist the King's *Woods* for *Mast*, which Agistment may be for Beasts not *commonable*; *viz.* for Swine and Hogs; and it begins 15 Days before *Michaelmas*, and ends 40 Days after, *viz.* about the Feast of St. *Martin*.

32. The next *Swanimote* Court is held about that Time, as appears *in Charta Foresta*, *Artic.* 8. *viz. Et circa festum Sancti Martini in Hyeme quando Agistatores nostri debent recipere pannagium nostrum, &c.*

33. So that as the King's Agistors do begin to take in Swine and Hogs at the *Swanimote* holden on *Holy-Rood-Day*, to feed on the *Mast*; so at the next *Swanimote* afterwards held on the Feast of St. *Martin*, (at which Time the agisting of Hogs is ended) then they likewise, in the Presence of the Foresters and Verderors, receive the Money for the same, which is called *Pannage*, which is likewise entered on the Verderors Rolls.

34. But previous to all this, when the Times and Seasons are come to agist the King's Demesne Woods and Lands, as well for *Herbage* as *Pannage*, then the Agistors, Foresters and Verderors, must certify the Lord Chief Justice in Eyre thereof, who thereupon will direct a Commission to them, signifying what he will have done in this Matter, and how they are to proceed in taking Agistments;

ments; which Commission must be returned to the said Chief Justice at the next Justice-Seat to be holden for the said Forest, together with a true Certificate how they have executed the same.

35. This appears by *the Assises and Customs of the Forest, Artic.* 14. *in Rastal, titulo Forest.* 21. viz. *Sciendum est quòd tempore Pannagii, quando Agistamentum debet fieri, debent Forestarii, Viridarii & Agistatores assensum intimare Justitiariis Forestæ Domini Regis, & inquirere voluntatem suam, & fiat Agistamentum tam in Dominicis Haiis & boscis, quàm in forinsecis; & secundùm mandatum suum & tenorem literarum debet fieri Agistamentum; quas literas debent habere coram Justitiariis de Forestâ prox. itinerantibus, &c.*

Of the Time of Agisting other Mens Woods and Lands.

36. Every Man, who hath Woods and Lands within the Regard of the Forest, may agist them, for the *Herbage* only, with his Beasts and Cattle, at all convenient Times of the Year; but it must be with his *own Cattle*; so that the Woods and Underwoods be carefully preserved to grow again for the Covert of the Beasts.

37. For, by the Laws of the Forest, no particular time is appointed for Men, who have Woods or Lands within the Forest, to agist them with their commonable Cattle; but they may do it at any time when they please, that is, they may depasture their *own Cattle* with the Herbage there.

38. This appears *in Charta Forestæ, Articul.* 9. viz. *Unusquisque liber homo agistet boscum suum in Forestâ pro voluntate suâ & habeat pannagium suum:* So that he is not only entituled to the *Herbage* of his Woods and Lands, but to the *Pannage*, that is, to the *Mast* of the Trees.

39. But

39. But if a Man hath Woods or Hedge-rows, near or adjoining to the King's Demeſne Woods, in ſuch Caſe the Owner muſt not agiſt his Woods or Hedge-rows with Swine or Hogs, until the King hath agiſted his Woods, becauſe they are not to prejudice or hinder the King's Agiſtment.

40. This is evident by *the Aſſiſes and Cuſtoms of the Foreſt, Articul.* 13. *Raſtal. Titul. Foreſt.* 21. viz. *Si quis habuerit boſcum juxta Dominicum boſcum Domini Regis, licitum eſt ei, poſtquam Dominicæ haiæ agiſtatæ ſunt, habere tempore Pannagii tot porcos, quot Boſcus per viſum Foreſtariorum, Viridariorum, Regardatorum, Agiſtatorum, & aliorum proborum hominum, poſſit pati: Et hoc fiat de exitu porcorum, &c.*

41. And as men may agiſt their own Woods, within the Regard of the Foreſt, at any Time, for the *Herbage* thereof, with their *own Cattle*; ſo they may, for the *Paunage* thereof, with their *own Hogs*, at any time, except their Woods and Hedge-rows are contiguous to the King's Woods, as aforeſaid; and thoſe they muſt not agiſt till after the King's Woods are agiſted, which is about the Feaſt of St. *Martin*, and afterwards they may do it when they will. *In Clameo Abbatis de Ryval. Itin. Pickering, fo.* 166. 10. *Ed.* 3.

42. But notwithſtanding the Words before-mention'd, *in Charta Foreſtæ, Articul.* 9. viz. *Unuſquiſque liber homo agiſtet boſcum ſuum, &c.* he muſt not agiſt his Woods with the Cattle of *Strangers* for the *Herbage* thereof, unleſs he hath *Licence* ſo to do; for if he doth, 'tis fineable to the King at the next Juſtice-Seat.

43. For, by the Laws of the Foreſt, they may agiſt their *own* Lands with their *own* Cattle, but not with the Cattle of *Strangers*, for the *Herbage* only; but, by the ſame Laws, they are allowed to agiſt their own *Woods* and *Lands* within the Regard of the Foreſt, for the *Paunage* thereof, as well

well with the Hogs and Swine of *Strangers*, as their *own*. *Aſſiſæ & conſuetud. Foreſtæ, Artic.* 13. *Hesket, fo.* 16. This appears in *Aſſiſa Foreſtæ Pickering, fo.* 166. *Charta Foreſtæ Articul.* 9.

44. And the Reaſon of this Difference is, *viz.* If the Charter of the Foreſt gave Men Liberty to agiſt their Woods and Lands within the Foreſt, for the *Herbage* thereof, with the Cattle of *Strangers* as well as with their *own*, then they would agiſt their Lands and Paſture ſo bare, that it might be very prejudicial to the Deer for want of Food.

45. Every Agiſtor of the King's Woods in his Foreſts, muſt bring, before the Juſtice-Seat, a true Accompt what Money he hath receiv'd for *Pannage*, and the Form of the Entry is thus; *viz. Robertus M. reſpondebat de VI s. de pannagio porcorum de Eaſtwood, &c.*

Agiſtor, ſee *Rolls* 5.

46. The Office of an Agiſtor is to preſent Treſpaſſes done by Cattle; and if he preſent any Thing which doth not belong to his Charge, the Preſentment is void: And therefore one *Finch* was fin'd 10 *l.* at the Juſtice-Seat, *in Itinere Windſor*, for making the Agiſtors preſent Things which did not belong to them, and for perſwading them to withdraw their Preſentments. *Jones* 280.

47. There may be ſome Foreſts where there are no Agiſtors, becauſe the King may have no Woods there to agiſt; but in every Foreſt where the King hath Woods, theſe Officers are very neceſſary, not only to look after ſuch Woods, but to anſwer the Profits of Agiſtment to the King.

Amerciament, ſee *Diſtreſs*, 1. 4.

Appearance at the Justice-Seat.

See { *Boundaries*, 18. *Charge, in Chief Justice*, 13. *Distress*, 3, 4. *Forester*, 58.

1. BEfore the making of *Charta de Foresta*, all Men *within the County*, of what Quality soever, were bound to appear at the Justice-Seat, upon a *General Summons*.

2. This appears *in Assisa Forestæ, fact. tempore H.* 2. *Cap.* 19. viz. *Comites, Barones, Milites & liberi Tenentes, & omnes homines de Com' veniant ad Summon. nostri Forest', sicut se voluerint defendi, ne incidant in manus Regis, ad placitanda placita de forestis suis, vel ad alia negotia facienda in Com', &c.*

3. But it being found inconvenient for Men living out of the Forest, to appear upon such a Summons, it was therefore remedied by *Charta Forestæ, Articulo* 2. viz. *Homines verò qui manent extra forestam non veniant de cætero coram Justitiar. nostris de foresta per Communes Summonitiones, ni sint implacitati vel plegij alicujus vel aliquorum qui attachiati sunt propter forestam*: Where, by the Words *de cætero*, 'tis implied, that, before the making that Statute, all the Inhabitants in the County were bound to appear before the Justices of the Forest upon a *General Summons*; which was a very great Trouble to those who liv'd at a great Distance from the Forest, and which was remedied by this Statute.

4. The chief Reason of this Clause was, that King *H.* 2. having afforested the Woods and Lands of several of his Subjects, to which he had no manner of Title, and which afterwards were appointed to be dis-afforested; this Branch of the Statute

Statute was chiefly intended for their Eaſe, who formerly had lived within ſuch Parts of the Foreſt, which now, by this Statute, were diſ-afforeſted, that they might not be compell'd to appear at the Juſtice-Seat; and 'tis divided into Two Parts;

1. *Concerning thoſe who dwell without the Foreſt.*

2. *Concerning thoſe who dwell within.*

5. As concerning thoſe who dwell without the Foreſt, in ſome Caſes they ought to appear before the Juſtices of the Foreſt upon a *General Summons*, notwithſtanding the Words of the Statute; *viz. If they have any* Liberty or Franchiſe within the Foreſt, by Reaſon whereof they are to put in their *Claim* before the Juſtice in Eyre; then, though they dwell out of the Foreſt, they muſt neceſſarily appear at the Firſt Day of the Seſſions, as aforeſaid, otherwiſe their Liberties will be ſeiſed into the Hands of the King, as forfeited, for not claiming the ſame.

6. So if one, who dwelleth out of the Foreſt, hath a *Profit apprender* out of any Land, or any Office within the Foreſt, or any other Privilege or Liberty there, he muſt appear on the firſt Day of the *Seſſions*, and put in his Claim; otherwiſe, ſuch Office, Privilege or Liberty will be ſeiſed into the King's Hands for Non-claimer.

7. And in theſe Caſes he is bound to take Notice of a General Summons, though he live out of the Foreſt.

8. For, if a Man hath two Houſes, one within, and the other without, the Foreſt, and the Owner dwelleth ſometimes in one and ſometimes in the other, and probably may be dwelling in that *out* of the Foreſt, at the Time when the *General Summons* is made; yet he muſt appear before the Juſtices of the Foreſt upon ſuch *General Summons*;

mons; and this was the Opinion of Mr. *Hesket* in his Reading.

9. 2d. In ſome Caſes thoſe who dwell within the Foreſt are not compellable to appear upon ſuch *General Summons*; *viz.* All thoſe who are under the Age of 12 Years, though they have likewiſe Lands of Inheritance within the Foreſt. *Stat.* 52. *H.* 3. *cap.* 26.

10. So thoſe who are ſick or blind, thoſe who are 70 Years of Age, or upwards, *Stat. W.* 2. *cap.* 38. Thoſe who are employed in the Service of the King in any other Place; in ſuch Caſes they may have the Writ *Warrantia diei* to excuſe their Appearance.

11. So though an Archbiſhop or Biſhop hath Lands within the Foreſt, he is not bound to appear upon the *General Summons*. *Hesket*, *fo.* 8.

12. And yet the Words of the Summons are, *viz. Præcipio quòd ſummoneas per bonos Summonitores omnes Archiepiſcopos, Epiſcopos, Comites, Baronei, Milites & eorum liberos Tenentes, qui terras aut tenementa habent infra metas foreſtæ Domini Regis, &c.*

13. But all *Spiritual Perſons* are exempted, by the Statute of *Marlbridge*, to ſerve on Juries; yet their Tenants ſhall appear upon this *General Summons*, if they dwell in the Foreſt; and if they neglect, they ſhall be amerced. *Treberne*, *fo.* 8.

14. Neither ſhall *Earls and Barons*, who have Lands within the Foreſt, and *dwell out* of it, be compelled to appear upon this *General Summons*, becauſe they are not to be put upon any *Enqueſts*.

15. But *Archbiſhops*, *Biſhops*, *Earls*, and other *Noblemen*, who *claim* any Liberties, Freedoms or Privileges within the Foreſt, muſt appear upon ſuch *General Summons* to claim the ſame: Otherwiſe ſuch Privileges, *&c.* will be ſeiſed into the King's Hands for *Non-Claimer*; but they need not appear in *Perſon*, but by *Attorney*.

16. The

16. The Tenants of ſuch Noblemen and Knights, and all other free Tenants, who dwell within the Foreſt, muſt appear; but Women who are free Tenants, and the Servants of thoſe who dwell in the Foreſt, ſhall not appear; for 'tis ſufficient if the Maſter appear, and not his Servant. *Quia ille eſt ſub manupaſtu alterius*, &c.

17. So that Knights, as aforeſaid, and thoſe who are Freeholders dwelling within the Bounds of the Foreſt, although they are Spiritual Perſons and dwell out of the Foreſt, yet they muſt appear on the Firſt Day, before the Chief Juſtice in Eyre, at the Seſſions of the Foreſt, upon ſuch *General Summons*, notwithſtanding the Words of the Statute; *viz. Qui manent extra foreſtam*, &c. For though they dwell out of the Foreſt, yet becauſe they have Lands within the Foreſt, the Law doth account them reſiant where their Lands are; for otherwiſe the Seſſions could not be held, nor Juſtice done in Trials of Liberties and other Things concerning the Foreſt. *Itin. Pick. fo.* 6.

18. So that all Perſons who have to do within the Foreſt, as well Spiritual as Temporal, muſt appear; and for not appearing, the *Abbot of Weſtminſter* was amerced; and ſo was *Jeffery Lucy*, a great Lord. *Jones Rep.* 275. and the Amerciament ſhall be affeered. *Itin. Pick. fo.* 6.

19. The Reeve of every Town in the Foreſt, and four Men with him, muſt appear likewiſe on the Firſt Day, or they ſhall be amerced, and their Amerciaments ſhall be affeered.

Of *Appearance in Proper Perſon, by Attorney, by Guardian*, &c.

20. All Perſons who are bound to appear upon a *General Summons*, in reſpect of their *Lands* which they

they have in the Foreſt, to ſerve there upon Enqueſts, muſt appear in *proper Perſon.*

21. But thoſe who are bound to appear, in reſpect of any Claim of *Liberties* or *Privileges*, may appear, either in proper Perſon, or *by Attorney.*

22. It appeareth by the *Aſſiſes and Iters of the Foreſts of Lancaſter and Pickering*, that thoſe who are impleaded for Treſpaſſes done within the Foreſt may appear,

1. *In proper Perſon,*
2. *By Attorney,*
3. *By Guardian,*
4. *By Prochein Amy.*

23. It was Mr. *Hesket*'s Opinion, That upon a Bill, Preſentment, or Indictment, for a Treſpaſs done in the Foreſt, the Defendant may appear either in proper Perſon or by Attorney; but this Appearance by Attorney muſt be enter'd at the Court of *Attachments*, or at the *Swanimote*, and not at the *Juſtice-Seat.*

24. For every Offender, who is bound to appear there, to anſwer any *Treſpaſs* done in the Foreſt, muſt appear in *proper Perſon*, becauſe, in ſuch Treſpaſſes, the King is Party, that is, he is Plaintiff; and therefore it is holden for Law in 20 *Ed.* 3. That in Treſpaſs, where the King is Party, the Defendant muſt appear in *proper Perſon*, and not by Attorney; and ſo muſt all Offenders who have been preſented at the *Swanimote Court.*

25. In many Caſes the Defendant may appear in proper Perſon or by Attorney; as for inſtance, If a Man commit a Treſpaſs in the Foreſt *after* the Court of Swanimote is holden, and *before* the Juſtice-Seat is kept, and is there preſented, he may appear either in Perſon or by Attorney, and traverſe the Preſentment; for this ſhall not be ſaid to be *Præſentatum per Foreſtarios, & convict. per Viridarios*,

Viridarios, unleſs the ſame was preſented at the *Swanimote* according to the Ordinance of the Foreſt, *Anno* 34. *Ed.* 1. 4 *Inſt.* 297. 20 *Ed.* 3.

26. For any Perſon who makes any Claim to Privileges or Liberties in the Foreſt, may, at the Firſt Day of the Eyre, appear in Perſon or by Attorney. *F. N. B.* 26. *G.*

27. But all thoſe who are mainpriſed or bail'd until the General Seſſions of the Foreſt, muſt appear in Perſon, and not by Attorney.

28. In ſome Caſes the Appearance may be by *Guardian* or *Prochein Amy*; as if an Infant is impleaded before the Chief Juſtice in Eyre for a Treſpaſs done in the Foreſt, he may appear in proper Perſon and ſhew that he is under Age, and pray the Chief Juſtice that *I. P.* may be aſſigned for his Guardian, or if he doth not appear in Perſon, but the ſaid *I. P.* appeareth for him, and ſheweth he is an Infant, and prayeth he may be admitted as Guardian, the Court will admit him accordingly.

29. And if an Infant hath choſen his Guardian, who is afterwards ſick, or will not appear before the Juſtice-Seat; yet if the Infant appears and prayeth that *I. S.* may be admitted for him as *Prochein Amy*, he will alſo be admitted according to that Prayer.

30. If a Man is attached for a Treſpaſs in the Foreſt, and finds *Pledges* to appear at the next General Seſſions; there the Defendant as well as the *Pledges* muſt appear in *Perſon*, according to the Opinion of Mr. *Hesket*, *fo.* 11. *Quia principales debitores & plegii ſunt equales ad debitum Regis, ſed aliter de aliis debitoribus*: And if the *Pledges* appear, and not the Defendant, they ſhall be impriſoned for his Default until they have made Fine for it; but if the Defendant himſelf appear, and is ready to

receive his Judgment and pay his Fine, the *Pledges* are excused.

31. But if he doth not appear, and if the *Pledges* are bound in a certain Sum for his Appearance, then, though the *Pledges* appear, yet the Sum in which they were bound, is forfeited for the Default of the Defendant.

32. But in such Case the King cannot have Execution against them presently for the Sum so forfeited; but there must be a *Sci' fa'* against them, to shew Cause, why the King should not have Execution of the said Sum; to which they may appear, and plead either in Bar, though the Default doth appear by Matter of Record, or any other Matter, to save the Default of the Defendant.

33. For in every Case, upon a *Sci' fa'*, the Defendant may plead *special Matter* in Avoidance thereof, as well as upon any Original Process.

34. If the *Pledges* do not appear, in such Case they shall be *amerced*, but not *fined*.

35. If the 4 Men and the Reeve of any Town make Default in appearing upon the first Sitting of the Justice Seat, the whole Vill shall be amerced; but if, after *Appearance* and an *Adjournment*, they or any of them, make Default, then he or those who made such Default, shall be *amerced*. *Fones*, 279.

36. If any Officer make a *Deputy*, he ought to appear at the Justice Seat; and it must be enquired, if such *Deputy* make Default. *Fones's Rep.* 275.

237. A Forester in Fee *in jure uxoris*, may appear by Attorney, at the Justice Seat. *ad faciendā ovinia quæ Forestarii in comitatu debent durante itinere*, *Assis. Pickering*, *fo.* 2.

238. Note, the Prior of St. John of Jerusalem did make this Claim by one of his Confreres, whom he made his Attorney, being a *Lond Person in Law*.

Assart.

Assart.

See { *Charge, in Chief Justice*, 4, 47.
Nusance, 9.
Purpresture, 43, 44.
Regarders, 28.
Assisa Foreste, 4.

1. THis Word was first used in *England*, by *William the Conqueror*; 'tis a *French* Word, and comes from *Assartir*, or, as my Lord *Coke* tells us, *Essarter*, which signifies, to make plain, or grub up; and from hence is derived the barbarous *Latin* Word *Assarto*, which is, to pull up by the Roots, *Assartare enim est densas Silvas eradicare & in culturam redigere*; so that *Assart* is to destroy any Covert, by the rooting it up and to make it plain Ground. The *French* Word now is *Arracher*, which is *Eradicare* or *Eruncare*: In the Writ of *ad quod damnum*, in the Register, 'tis *Assertare*, and not *Assartare*, as 'tis in *Budæus in* 2 *Lib. Philologiæ*: And some are of Opinion it comes from *Ad* and *Sero*, to Sow.

2. *Assart* of the Forest is described *in Libro Rubro Scaccarii*; viz. *Quando foresta nemora vel dumeta, pascuis & latibulis ferarum opportuna, succiduntur, quibus succisis, & radicibus evulsis, terra subvertitur & excolitur. Hesket, fo.* 20.

3. So in the *Register, fo.* 257. *Assart* is, where a Man doth fell and destroy his Woods, and convert the Soil, where they did grow, into Tillage: The Words are, *viz. Mandamus vobis, quod per Sacramentum, &c. Inquiratis, si sit ad dampnum, seu nocumentum foreste nostre prædicte, aut alicujus alterius, si concedamus* A. *quod ipse arbores in Bosco suo de* M. *qui est infra metas foreste nostre prædicte, succidere, & eas, quo voluerit, caziare, ac commodum*

ſuum inde facere, & ſolum illud poſtmodum aſſertare, & in culturam redigere, ac parvo foſſato & baſſâ hayâ, ſecundum aſſiſam foreſtæ includere.

4. So that if a Man hath any Woods or Underwoods, or any other Coverts in the Foreſt, as Heath, Broom, Fern, and he cut it down, or pull it up by the Roots, that the Land is made plain, or converted into Arable or Paſture, then 'tis called *Aſſart* of the Foreſt, or Land aſſarted, though the Owner receive no Profit by it. *Heſket, fo.* 20, 21.

5. Mr. *Heſket* was of Opinion, That if a Man hath Meadow or Paſture Ground in the Foreſt, which is ſurrounded with thick Coverts where the Wild Beaſts of the Foreſt frequent, if the Owner or Tenant, or other Occupier thereof, convert the ſame into Tillage, 'tis an *Aſſart* of the Foreſt, or Land aſſarted. *Heſket, fo.* 20.

6. And the Difference between a *Waſte* of the Foreſt and an *Aſſart* is this; *viz.* A *Waſte* is the *felling* or cutting down any *Covert* of the Foreſt without *Licence*; but an *Aſſart* is the *deſtroying* a Covert, and converting it into Plain or Arable Land.

The Forfeiture and Puniſhment of Aſſarting his own *Woods and Lands in the Foreſt.*

7. As no Man may *aſſart* without the King's Warrant, ſo the Ground, ſo *aſſarted*, is not *forfeited* to the King; but it ſhall be *ſeiſed* into his Hands, until redeemed by a Fine. *Heſket, fo.* 30.

8. So if a Man do aſſart a Covert, without Licence of the King, or the Chief Juſtice in Eyre; and, afterwards, if the Owner die before 'tis preſented, the Land ſo aſſarted ſhall be *ſeiſed* into the King's Hands, until the Heir redeem it by a Fine: But if neither the Owner, whilſt living, or his Heir

Heir afterwards, will redeem it, it ſhall remain with the King for ever.

9. In the *Aſſiſes of Pickering*, 8 *Ed.* 3. it appeareth, that Lands aſſarted were *ſeiſed* into the King's Hands, but afterwards redeemed by the Owners paying a Fine.

10. But the Laws of the Foreſt appoint no certain Sum for a *Fine*; therefore 'tis arbitrary at the Diſcretion of the King, or the Chief Juſtice in Eyre; but uſually he doth aſſeſs the *Fine* according to the Number, Goodneſs and Value of the Acres aſſarted; therefore in every Indictment or Preſentment made of any *Aſſart* or *Waſte* in the Foreſt, the Number and Value of the Acres ought to be expreſſed.

11. In the new Aſſizes of the Foreſt, *Anno 6. Ed.* 1. *cap.* 4. *& in Raſtall. Tit. Foreſt.* 21. it is ordained, *Quòd ſi quis inventus fuerit in Dominico Domini Regis aſſertando vel purpreſturam faciendo, Corpus debet protinus retineri; ſi autem extra dominicum infra Rewardum, debet poni per ſex plegios; ſi autem aliàs inveniatur, debet duplicare ejus plegios; ſi tertio, corpus debet retineri*; and ſuch an Offender, for the third Offence, is not, by the Laws of the Foreſt, bailable by any Man, but only by the Lord Chief Juſtice in Eyre, or his Deputy.

12. By the Aſſiſes laſt mentioned, it appears, that there is a difference between *aſſarting* the King's Woods and Lands, and the *aſſarting* thoſe of other Men; for he who is found aſſarting the *King's Lands*, is to be committed for the firſt Offence without Bail, (except delivered by the Chief Juſtice in Eyre, or his Deputy) till he hath paid a Fine to the King; but he who is found aſſarting the Lands of a *Common Perſon* in the regard of the Foreſt, is bailable for the firſt and ſecond Offences, but not for the third; for in ſuch caſe his Body ſhall be impriſoned until he hath paid a Fine to the

King, unless the Chief Justice in Eyre will bail him as aforesaid.

13. It was adjudged in the *Assizes of the Forest of Pickering*, 8 *Ed.* 3. in fo. 25. and 18. of the said Assizes, and in the case of the *Prior of St.* John *of* Jerusalem, That no man may assart his own Lands in the Regard of the Forest, without a special *Licence* from the King so to do; and if he doth assart them without such Licence, he shall pay a grievous Fine to the King; and if he will still continue them so assarted, then he must compound with the King or Chief Justice in Eyre, to pay a yearly Rent to the King for the same, which must be entered on Record at the time the Rent is set.

14. And likewise, fo. 7. and 11. of the said Assizes, it was adjudged, That he who is presented to have assarted or inclosed any Lands in the Forest out of the King's Lands, either is his own Fee, or in the Fee of any other Man, shall be fined for this Offence; and if he will compound with the King or Chief Justice, he may continue them so assarted, paying an yearly Rent, which must be entered in manner as aforesaid.

The Forfeiture or Punishment for assarting the King's Lands.

15. By the New Assizes of the Forest made 6 *Ed.* 1. *Artic.* 4. and in *Rastal, tit. forest, fo.* 21. 'tis ordained, *Quod si quis inventus fuerit in dominico Domini Regis assartando, vel purprasturam faciendo, corpus debet protinus retineri*, &c. as aforesaid.

16. That is, He shall be committed to Prison, there to remain till he hath paid a *Fine* to the King; and by the ancient *Iters* of the Forests of *Pickering and Lancaster, fo.* 35. 8 *Ed.* 3. in the case of *Gilbert de Aton*, the Fine, in such cases, shall be double as much as for the like Offence in his *own Woods* or Lands, and yet,

yet, in both cases, the Fine is arbitrary; for 'tis a bolder Offence to make an Assart or Purpresture in the King's Lands, than in his *own*, and therefore to be more severely punished; which is the reason, that he who is actually taken, either in making Assart or Purpresture in the King's Lands, shall not be bailed for the first Offence; but he who assarts his own Lands, shall be bailed, both for the first and second Offence, but not for the the third, as aforesaid.

Attachment-Court.

See { *Presentment*, 1, 2, 3.
Regarders, 28.
Assisa Foresta, 4.

1. THIS is one of the three Courts of the Forest, and 'tis held for the Foresters to bring in their Attachments, concerning any Hurt or Injury done *in viridi & venatione* in the Forest; and for the Verderers to receive and enroll the same; and this Court being held by the *Charter* of the Forest, *ad videndum Attachiamenta*, 'tis therefore called, *The Court of Attachments*.

2. By the aforesaid *Charter*, this Court is not to intermeddle with any thing but such which concerns an Injury or Hurt done, or to be done, to the *Vert* or *Venison*; for their Authority is *tàm de viridi quàm de venatione*; and the Foresters bring in their Attachments as well of the one as the other, which the Verderers are to receive and enroll.

3. But this is only a Court of *Enquest*; for an Offender cannot be *convicted* here, neither can he be attached by his *Body*, but by his *Goods*, unless

be is actually taken committing the Offence in the Foreſt. 1. *inſt*, 289.

When and how often this Court is to be kept.

4. Before the making *Charta Foreſta*, this Court of Attachments was held very often, but at no certain time, only at the Will and Pleaſure of the chief Officers of the Foreſt.

5. To remedy this Inconveniency, 'tis provided by that Charter, That, *ſingulis quadraginta diebus per totum Annum conveniant Foreſtarii & Viridarii*, to hold this Court; and therefore 'tis by ſome called *the Forty Days Court*, which before was called *the Woodmote-Court*, *Charta de Foreſta cap.* 8. *Co.* 4, *Inſt.* 289.

6. So that the time of holding this Court being limited by this *Charter* or Statute, *viz.* That it ſhall be kept every *Forty Days* throughout the Year, it hath been adjudged, that if 'tis kept at any other time, either ſooner or later, then the keeping ſuch Court is void.

7. Yet I am of Opinion, that the Proceedings in ſuch Court are not void in Law; for if there are Preſentments then made, and afterwards thoſe Preſentments do proceed to the Swanimote-Court, and then the Defendant takes Exception to them, becauſe they were firſt made at a Court of Attachment not held according to the time limited by the Statute, ſuch Exception ſhall not be allowed; becauſe the Court of Attachment doth not proceed *judicially*, but only to receive the Preſentments and cauſe them to be enrolled, in order to deliver them to the next Swanimote-Court; So that the receiving a Preſentment or Attachment at ſuch an irregular Court will not make it void; for if it had not been made there, 'tis ſtill good in Law,

Law, though 'tis not presented until the next Swanimote-Court, and not before.

8. But if a Court of Attachments is held contrary to the Statute, and a Forester hath attached an Offender in the Forest, either by an Ox or Horse, to appear at such Court before the Verderors, and he doth not appear, so that the Court doth adjudge the Beast forfeited for this Default, and appoints it to be sold, and the Money paid to the King, this Proceeding is void in Law, because the Court did proceed *judicially*, which they ought not to do. *Hesket, fo.* 13.

9. Yet, in some cases, this Court of Attachments may be kept either sooner or later than the *Forty Days*, and yet, according to the Statute; as if the fortieth Day is upon *Christmas*-Day, or on a *Sunday*; in such case it may be held on the Day following.

10. But where it is said, that the Court of Attachments doth not proceed in a Cause *judicially*, it must be intended where the Value of the Trespass is above 4 *d.* for in such case it must be enrolled in that Court by the *Verderors*, and sent from thence to the *Swanimote*, to be tried there according to the Laws of the Forest; but if the Trespass is *under* the Value of 4 *d.* the Court of Attachments may determine the same, that is, the Verderors may assess the Fine, and cause the same to be levied to the use of the King, which must be entered on the Roll.

Of

Of the ſeveral Kinds of Attachments of the Foreſt.

11. There are Three manners of Attachments of the Foreſt.

Either { 1. *By Goods and Chattels.*
2. *By the Body, Pledges and Mainprize.*
3. *By the Body without Pledges.*

12. If any Offence is done in the Foreſt, in any manner of *Underwood*, *Buſhes*, *Furze*, or other thing called *Nether-Vert*, the Foreſter may attach the Offender by his Goods, to appear at the next Court of Attachment, in the ſame manner as the Sheriff doth attach the Goods of any Perſon at Common-Law, either in an Action of Debt, or Treſpaſs, to appear at the County-Court.

13. After the Attachment is made, the Foreſter muſt acquaint the Owner of the Goods, for what cauſe they are attached, and require him to appear at the next Court of Attachments, and to find *Pledges* to anſwer the Offence; and in the mean time the Foreſter muſt keep the Goods attached until the next Court of Attachments, and then he is to bring them before the Verderors, and to preſent the Offence, and to ſhew them the Goods attached.

14. And if the Defendant doth not then appear, the Goods ſo attached are forfeited, and ſhall be ſold, and the Value anſwered to the King; and the offender ſhall be attached again *in infinitum*, until he appear and put in Sureties to anſwer the Offence at the next Juſtice-Seat of the Foreſt, and then his Goods muſt be re-delivered to him.

15. The like Attachments of Goods may be made for all manner of ſmall Treſpaſſes in the Foreſt, and for moſt Treſpaſſes in *Vert* or *Veniſon*, if

if the Defendant is not *actually* taken committing the Offence; for in such case the Forester may attach the Body, and compel the Offender to come before the Verderors at the said Court of Attachments, there to find Sureties to answer the same at the next Justice-Seat of the Forest, before the Chief Justice in Eyre.

16. (2) The Second manner of Attachment is, by the *Body*, by *Pledges*, and by *Mainprise*; and this is where the Forester doth take an Offender *actually* committing any Offence in *Vert*.

17. So if he is making Assarts or Purprestures in the King's Lands or Woods, there the Forester may attach him by *his Body*, and make him find *Pledges* to answer the Offence at the next Court of Attachments, and upon his Appearance there, to be *mainprised* until the coming of the Chief Justice in Eyre.

18. This manner of Attachment is warranted *per Consuetudines & Assisas Foresta, Articulo* 1. viz. *Si forestarius invenerit aliquem attachiabilem pro viridi in foresta nostra, primò debet ipsum attachiare per duos plegios, &c.* And if the same Offender is taken the second time, then the Forester shall attach him by the *Body*, and cause him to find four *Pledges* to appear at the next Court of Attachments, then and there to be *mainprised* until the General Sessions of the Lord Chief Justice in Eyre.

19. The Words are these; *viz. Si idem invenitur alibi, debet ipsum attachiare per quatuor plegios*; And if the third time, then the Forester shall attach him by *the Body*, and cause him to be brought before the Verderors, there to be mainprised by eight Pledges.

20. And in all cases where the Offender is to be attached by the *Body and Pledges*, he must be taken *actually* doing the Offence: This appears by the Statute 1 *Ed.* 3. *Cap.* 8. which hath made some Alteration

Alteration in the Statute 6 *Ed.* 1. *de Aſſiſis & Conſuetudinibus foreſtæ*; viz. It directs in what Manner and Form the Offender, either in *Vert* or *Veniſon*, ſhall be indicted, and before whom, and that if any Man is indicted in other manner, that the Indictment ſhall be void. 7 *R.* 2. *Cap.* 4.

21. And further, 'tis by the ſame Statute enacted, That no Man ſhall be taken or impriſoned for *Vert* or *Veniſon*, unleſs he be taken *with the Manner*, or indicted after the Form therein ſpecified.

22. So that now, by theſe Statutes, 1 *Ed.* 3. *cap.* 8. & 7 *R.* 2. *Cap.* 4. If the Offender is not taken *actually* doing the Treſpaſs, then the Foreſter cannot attach him by *the Body*, or impriſon him to find Sureties; but he may be attached by his *Goods* in ſuch manner as before is mentioned.

23. (3) The third manner of Attachment for Offences in the Foreſt, is to attach the Offender by *the Body only*, without any Pledges or Mainpriſe; and this is warranted *per Aſſiſas & Conſuetudines Foreſtæ*, and confirmed by the Statute 1 *Ed.* 3. *cap.* 8. and 'tis there declared, that Offenders may be ſo attached in Six Degrees of Offences in Foreſts.

24. The Firſt Degree is mentioned *in Aſſiſa & Conſuetudine Foreſtæ, Art.* 1. viz. *Poſtea, poſt tertium Attachiamentum corpus debet attachiari & retineri, & memoria habeatur quid ſit Virid. &c.* For that if an Offender hath been taken *actually* doing an Offence in the *Vert* in the Foreſt, and hath been delivered by two Pledges, and for the ſecond Offence hath been delivered by four Pledges, and for the third Offence by double that Number; then, if he be taken the fourth time, he ſhall be attached by *the Body, and impriſoned without Bail*, except he hath the King's Warrant to be bailed, or be delivered out of Priſon by the Lord Chief Juſtice in Eyre, or the chief Warden of the Foreſt.

25. The

25. The Second Offence for which a Man is to be attached by *his Body without Bail* is mentioned in the ſaid *Aſſiſes*, *Articulo* 4. viz. *Si quis inventus fuerit in Dominico Domini Regis aſſartando vel purpreſturam faciendo, corpus debet protinus retineri.*

26. So that if he is taken *actually* making any Purpreſture in the King's Woods, *his Body* ſhall be taken and detained in Priſo nwithout Bail, unleſs delivered by the King's ſpecial Warrant, or by the Chief Juſtice in Eyre, or chief Warden of the Foreſt.

27. The Third Offence is likewiſe mentioned in the ſaid Aſſizes, and in the 4th Article; *viz. Si autem extra dominicum infra rewardum, debet poni per ſex plegios; & ſi aliàs inveniatur, debet duplicare ejus Plegios; ſi tertiò, corpus debet retineri:* So that if a Man is found in the Foreſt the third time aſſarting, or making any Purpreſture in the King's Woods or Lands, he ſhall be attached by *his Body*, and committed without *Bail* until delivered as aforeſaid.

28. The fourth Offence in *in Aſſiſa & Conſuetudine Foreſtæ, Articulo* 5. viz. *Si quis attachiabilis fuerit contra vadios & plegios, debet diſtringi per catalla ſua infra metas Foreſtæ inventa; ſi autem defecerint, corpus ejus detineatur quouſque fecerit quod debuerit:* So that if a Man hath been an Offender in the Foreſt in *Vert*, and bound to his good Behaviour, and afterwards is taken *actually* committing the like Offence, and hath no Cattle in the Foreſt by which he may be attached for the ſame, then *his Body* ſhall be attached and detained in Priſon, till he hath done what he ought to do by Law.

29. And ſuch an Offender is called *contra Vadios & Plegios*, becauſe he offends contrary to his Sureties and Pledges, and he ſhall not be delivered out of Priſon, but as aforeſaid.

30. The Fifth Offence is for *Veniſon*, and 'tis mentioned in the ſaid *Aſſiſes*, *Articulo* 10. viz. *Si quis ceperit feram ſine Warranto in Foreſta, corpus ſuum*

ſuum arreſtetur, ubicunque inveniatur infra metas Foreſtæ; & quando captus fuerit, non deliberetur ſine ſpeciali præcepto Domini Regis, vel capitalis Juſticiarii Foreſtarum ſuarum.

31. And in the ſame *Aſſiſes*, *Articulo* 11. viz *Si quis viderit aliquos malefactores infra metas Foreſtæ aliquam feram capere vel aſportare, debet illos capere ſecundum poſſe ſuum, & ſi non poſſit, debet levare hutesium & clamorem, &c.* So that a Perſon killing a Deer in the Foreſt, or carrying it away, without Warrant ſo to do, he ſhall be attached by *his Body*, and impriſoned as aforeſaid, without Bail, *&c.* until he is delivered as aforeſaid.

32. The Sixth Offence is mentioned in the Statute 1 *Ed.* 3 *cap.* 8. and this is either in *Vert* or *Veniſon*, the Words are; *viz. No Man ſhall be taken nor impriſoned for Vert or Veniſon*, unleſs he be taken *with the Manner*, or elſe *indicted* after the Form ſpecified in the ſame Statute.

33. This is a Negative pregnant; for that if the Offender be indicted after the Form therein mentioned, and before ſuch Officers as therein appointed, then, if ſuch Offender is attached by *his Body*, either by the Foreſter or Sheriff, having a Warrant for that purpoſe from the Lord Chief Juſtice in Eyre, or from the chief Warden of the Foreſt, or his Deputy, he ſhall be committed without Bail, until delivered as aforeſaid.

34. The ſame Law where an Offender in the Foreſt is *outlawed* for the like Offence, and *his Body* is afterwards attached by the Sheriff by vertue of a *Capias Utlagatum*.

35. And the Law is, That in every caſe where the Offender is to be attached by *the Body only*, without Pledges or Mainprize, he is not to be bailed by the Verderors, nor by the Foreſters, or any other Officer of the Foreſt, without the King's ſpecial Command, or by the Lord Chief Juſtice in Eyre,

or the Chief Warden of the Foreſt: The Words of the Statute are,

36. "No Man ſhall be taken or impriſoned for "Vert or Veniſon, unleſs he be taken with the "manner, or elſe indicted after the Form before "ſpecified; and then the Chief Warden of the "Foreſt ſhall let him to Mainprize till the Eyre of "the Foreſt, without taking any thing for his De-"liverance: And if the Chief Warden will not do "ſo, he ſhall have a Writ out of the Chancery, "which hath been, in old time, ordained for ſuch "Perſons indicted, to be at Mainprize till the "Eyre; and if ſuch Chief Warden, after he hath "received the Writ, do not incontinently deliver "ſuch Perſons indicted to Mainprize, without ta-"king any thing, then the Plaintiff ſhall have a "Writ out of Chancery to the Sheriff, to attach the "ſaid Warden to be before the King at a certain "Day to anſwer, wherefore he hath not replevied "him who is ſo taken; and the Sheriff and the "Verderors being called to him, ſhall deliver him "ſo taken by good Pledges in the Preſence of the "Verderors, and ſhall deliver the Names of the "Mainpernors to the ſame Verderors to anſwer "to the Eyre of the Juſtices; and if the Chief "Warden be thereof attainted, the Plaintiff ſhall "recover his treble Damages, and the ſaid Warden "be committed to Priſon, and ranſomed at the "King's Will; and from henceforth it ſhall be "written to them as to the chief Warden of the "Foreſt, becauſe they may not be Juſtices, nor "have any Record.

37. 'Tis to be obſerved upon this Statute, That the Sheriff is to let him to *Mainprize* by the *King's Command*, that is, by the *King's Writ*, for other-wiſe he cannot do it.

38. And

38. And the Verderors in this caſe are but Aſſiſtants to the Sheriff; for they have not a joint Authority with him to let the Perſon to Mainpriſe, becauſe the Writ is not directed to them, but to the Sheriff alone.

39. 'Tis true, the Writ is, That the Sheriff ſhall let him to Mainpriſe *in preſentiâ Viridariorum*, becauſe that the Verderors being Judges of Record, the Names of the Mainpernors muſt be delivered to them.

Bail.

See { *Attachment*, 35. *Swanimote*, 6, 7. *Appendix*, Stat. 1. Ed. 3.

1. THE Words *Bail and Mainpriſe* being often mentioned in the *Aſſiſes of the Foreſt*, it may be proper to ſhew the Difference between thoſe Words.

2. *Bail* is where an Offender *traditur in Ballivum ad ſalvum cuſtodiend. ſemper in eorum cuſtodiâ quibus traditur uſque ad diem, &c.* Now in ſuch caſe the Perſon is always accounted in Law to be in their actual Cuſtody till that time, and they may keep him ſo in Cuſtody if they will; for he cannot properly be ſaid to be at Large or at Liberty.

3. And this manner of *Bail* is when any Man is *attainted of a Treſpaſs* in the Foreſt, and is taken in Execution of the ſame; then the Lord Chief Juſtice in Eyre may let him to *Bail*, and the Entry is, *I. S. traditur in Ballivum O. S. corpus pro corpore uſque*, &c. and in this caſe *Mainpriſe* doth not lie, and the Perſon thus bailed muſt be in proper Perſon; and none can let ſuch an Offender to *Bail*, but

but the Chief Juſtice in Eyre; 'tis true the *Chief Warden* may let a Treſpaſſer in the Foreſt to *Mainpriſe* by virtue of the Statute, 1 *Ed.* 3. *cap.* 8. but not a *Man attainted* of a Treſpaſs there. *Heſket, fo.* 11.

4. *Mainpriſe* is *quaſi manucaptus & liberatus ad largum uſque ad diem, &c.* and in ſuch caſe the Offender is always ſaid to be at large until the Day of Appearance.

How and before whom the Perſon is to be bailed.

5. In all caſes where a Man is to be attached by his *Goods* or Chattels, which is the firſt manner of Attachment, or by his *Body, by Pledges and Mainpriſe*, which is the ſecond manner of Attachment, the Verderors are the proper Officers to take the *Recognizance*, becauſe they are Judges of Record, and have the keeping the Rolls for Matters of the Foreſt till the coming of the Lord Chief Juſtice in Eyre; and ſuch *Recognizance*, with Pledges, is not to be taken by the Foreſters, becauſe they are not Judges of Record; their Office is to accuſe the Offenders, and to preſent their Offences before the Verderors.

6. Beſides, the Verderors are uſually Men of Learning in the Laws of the Foreſt, and it ſeems neceſſary they ſhould be ſo, becauſe Offenders are to be bailed and mainpriſed according to the Quality of their ſeveral Offences; in ſome caſes by two Pledges, and in ſome by four or more, and in ſome caſes no Bail at all is to be taken, as may be ſeen in the precedent Title.

7. Now if the Foreſters, or other Officers, who are ignorant of the Laws of the Foreſt, ſhould take upon them to bail ſuch Offenders, great Inconveniences might follow by letting thoſe to *Bail* who are not bailable by the Laws of the Foreſt, and by

denying *Bail* to thoſe who are bailable; therefore the Law hath provided a Steward, who muſt be learned in thoſe Laws, to join with the Verderors, and to direct them in their Proceedings.

8. When the Perſons are thus bailed by the Verderors, they are to keep the *Recognizance* for the uſe of the King till the coming of the Lord Chief Juſtice in Eyre; they are likewiſe to cauſe the Foreſters to preſent the Offence in the ſame Nature it was done, and to enter ſuch Preſentments on the Rolls.

9. The Verderors may likewiſe, if they think fit, take an Obligation or Bond of the Offender with Sureties; which Bond being made to the King's uſe ſhall have the ſame Force and Efficacy, as any Recognizance acknowledged according to the Statute of 33 *H.* 8. *cap.* 39.

10. Likewiſe, if the Foreſters might bail ſuch Offenders, there would be great Partiality therein, and many Treſpaſſes concealed from the King, and no Preſentments made thereof, either before the Verderors at the Court of Attachment, or at the Swanimote-Court.

11. Upon the whole matter, he who is taken *actually* doing *Aſſart* or *Purpreſture* in the King's Woods or Lands, is not *bailable* even for the firſt Offence; but he who doth the like Treſpaſs in his own Freehold or Land, may be bailed for the firſt or ſecond Offence, but not for the third.

12. If an Offender or Treſpaſſer in a Foreſt is apprehended by a Foreſter *in the manner*, either chaſing or killing a Deer, he may be arreſted and committed to Priſon, but he may be bailed upon giving ſufficient Sureties to appear at the next Eyre, and if ſuch Bail is refuſed, he may, if in Term-time, move the Court of *King's-Bench* for an *Habeas Corpus*, which will be granted *ex merito juſtitiæ*, or he may move the Court of *Common-*

Pleas, or *Exchequer* (if privileged) or the Court of *Chancery*, either in or out of Term, and upon this Writ he may be bailed to appear at the next Eyre to be holden for the Foreſt.

The Entry of the Bail is in this manner;

13. *Compert. eſt per rotulos Viridar. iſtius Foreſtæ quòd Edmundus Haſtings poſtquam tranſgreſſus eſt de Venatione in Foreſtâ illâ dimiſſus fuit coram eis per Manucaptores, &c. qui manuceperunt habend. eum hic, &c. primo die itineris, qui modo eum non habent, &c. Ideo, &c.*

14. But though a Foreſter cannot take Bail, he may detain a Man till he gets Bail. *Paſch.* 45. *Ed.* 3. *fo.* 7. *placito* 8. *viz.* An Action of Treſpaſs was brought againſt a *Foreſter* for taking and impriſoning the Plaintiff at ſuch a Place; the Defendant pleaded, That he was *a Foreſter in Fee* of the Foreſt of *W.* and that at a certain Court of Swanimote holden for that Foreſt, the Plaintiff was preſented by the Foreſters, Verderors, Regarders and Agiſtors, *&c.* for chaſing and taking a Deer in the Foreſt; whereupon the Defendant came to the Plaintiff, and deſired him to find Pledges to anſwer the ſaid Offence in Eyre, which he refuſed; by reaſon whereof he detained him in his Cuſtody *quouſque, &c.* and Iſſue being taken upon this Plea, it was found for the Defendant.

15. He may likewiſe be bailed by virtue of a Writ, *De homine replegiando*, directed *Cuſtodi Foreſtæ*, if he was arreſted by the Officers of the Foreſt for *hunting*, &c. and was indicted or preſented for the ſame, as taken *with the manner*; and in this caſe he muſt find twelve Pledges, but if he is adjudged by the Juſtices in Eyre, he cannot be bailed by that Writ.

16. Where a *Writ de homine replegiando* is directed to the *Sheriff*, he is reſtrained by the Statute, *W.* 1. *cap.* 15. to replevy any Man impriſoned for the Foreſt, being taken *with the Manner*; which Statute doth not extend to the *Writ de homine replegiando*, directed *Cuſtod. Foreſtæ, &c.*

Beadle.

See { *Diſtreſs*, 1. 8. *Foreſter*, 25. *Scotale*, 2.

1. IN *Chartâ de Foreſtâ, cap.* 7. there are theſe Words, *Nullus foreſtarius nec Bedellus, &c.* which imply, that the Beadle is an Officer of the Foreſt; his Buſineſs is to give notice of the time when the Courts of the Foreſt are to be kept, and alſo to make all manner of Proclamations as well in Court as out of it, and alſo to execute all the Proceſs of the Foreſt; he is like a Sheriff's Bailiff in the County, for his Office is almoſt the ſame in the Foreſt.

2. And although this Statute mentions only a Foreſter and Beadle, yet it extends to all other Officers of the Foreſt; for it was made to redreſs a general Miſchief, and therefore it ſhall not relate only to part, but to the whole, like the Statute which mentions only the Warden of the Fleet, yet the ſame extends to all other Priſon-Keepers as well as to him, becauſe it was made to redreſs a general Miſchief.

Boundaries of the Forest.

See { *Chief Justice*, 15. / *Charge, in Chief Justice*, 7. / *Hunting*, 60, 61. / *Appendix, in* Stat. 17. Car. 1. / *Appendix*, Assisa Forestæ, 19.

1. FOrests must be meered and bounded with *unremoveable Marks, Meers and Boundaries*, either known by matter of Record, or by Prescription; for though a Forest doth lie open and not enclosed with Hedge, Ditch, Pale or Wall, yet in the Eye of the Law it hath as strong an Enclosure by these Marks, Meers and Boundaries as if it was enclosed with a Wall.

2. These Marks, Meers and Boundaries are unremoveable, because the King hath an Interest in them; for 'tis established as a Law, *Secundùm assisam Forestæ quòd omnes meræ Forestæ sunt integræ domino Regi*; so that they who remove them are punishable for the same by *the Assises of the Forest*.

3. Besides, some of these Boundaries are unremoveable in themselves, because they are such things which cannot be removed, as *Rivers, Highways, Hills*, and such like; and for want of such Boundaries, great and remarkable Trees have been used for the same, but that is very seldom.

4. These Words, *Marks, Meers and Boundaries*, are often used in the old Perambulations of the Forest made *Anno* 29. *Ed.* 1. which were made by Men of great Judgment and Learning; and to signify the difference of such things as are Boundaries of the Forest, they used these Words, *Secundùm metas, bundas & meras pred.* where, by the Word *Meta*, they seem to understand a *Mark*; for any thing which ascends upward in height they

called a *Mark*, as, for instance, a Hill, a Church, a Tree, or such like; by the Word *Bunda* they understand any thing by which the Forest is bounded, which is a Level, and not higher in View than the Soil of the Forest itself, as a *River* or *Highway*, or the like.

5. By the Word *Mera*, they understand the Distance between the Forest and the Soil of other Men, whereon any thing stands which is a Mark of the Forest, in which *Mark* the King hath no Interest in the thing itself; for notwithstanding it is said that *omnes metæ Forestæ sunt integræ dominæ Regi*, yet that must be understood of such things which give any Shelter or Succour to the Wild Beasts of the Forest, and not otherwise.

6. For if a Dwelling-house, or a Mill, or such like, be a Mark of the Forest, yet the King shall have no Interest in it, because those are Marks rather *in Terrorem*, than any Succour, Covert or Relief for the Wild Beasts.

7. Wherefore there must necessarily be a Distance and Place between the Forest and such things; which Distance is called a *Meer* of the Forest.

8. In some Preambulations they use only these Words; *viz. Per Metas & Bundas*; by which is understood all manner of *Marks, Meers and Boundaries* whatsoever.

9. These *Marks, Meers and Boundaries* of the Forest are known either by Prescription or by matter of Record, or both.

10. For all those Forests which were newly enlarged by the Afforestation of *H.* 2. *R.* 1. or King *John*, have their Marks, Meers or Boundaries known by matter of Record, because Perambulations were made of them in the Reign of *Ed.* 1. in order to be disafforested.

11. But all such which were antient Forests before the Reign of *H.* 2. and where no Perambulations

tions were made since that time, because the People who dwell near such Forests had no Cause to complain that their Lands were afforested as the other had, the Marks, Meers and Boundaries of such antient Forests are known only by *Prescription.*

12. If it should be objected, that the King cannot make a Forest, but by matter of *Record*, 'tis true he cannot, but he may have a Forest by matter of Record whose *Boundaries* are known only by *Prescription*; for when these antient Forests were made, the Boundaries were known by matter of *Record*; but that being so long since, and the Nation having been often involved in many Wars and Troubles, the Records are all lost.

13. The newest Forest in *England*, except that of *Hampton-Court*, is in *Hampshire*, and 'tis called the *New Forest*, and yet that Forest was made in the Reign of *W.* 1. and there is no other of which the Beginning is mentioned in any History or Record.

14. The Forest Laws are likewise as antient as the Forests, except some few which have been altered and made more beneficial to the Subject by *Charta de Foresta*, and other later Statutes.

15. My *Lord Coke*, 2 *Inst.* 318. gives us a different Account of *Meets, Meers and Boundaries*, for he tells us, That *Meets* are either inclusive as *Ways*, *Rivers*, &c. or exclusive, as *Churches*, &c. that *Mera* is derived from the *Greek* Word Μείρω, which is to divide or bound; that *Bunda* is derived from the *Saxon Bunna*, which signifies a higher Thing, as *Hills*, *Houses*, *Trees*, &c. and *Marchia* is derived likewise from *March*, *Saxonicè*, now called a *Mark*, *sed meta accipitur pro quocunque termino, limite seu fine.*

16. And as 'tis necessary that every Forest should be bounded, so 'tis very requisite that the Boundaries should be generally known, especially

by thoſe who are Officers of the Foreſt; for if a Man is preſented for killing a Beaſt, 'tis very material that the Place ſhould be diſtinctly known where the ſame was killed; for though it might be a Wild Beaſt of the Foreſt, yet if it was killed out of the Limits thereof, it may be no Offence againſt the Foreſt Laws.

17. So when the *Regarders* proceed to view the Foreſt, and to ſee whether any Spoil is made in the Woods and Coverts, and to enquire of all ſuch Articles which they are bound by their Oaths, and by the Duty of their Office to do, 'tis neceſſary they ſhould know the Limits of the Foreſt, for otherwiſe they may make Inquiſitions where they ought not to come.

18. *In Charta Foreſtæ, Artic.* 2. there are theſe Words; viz. *Homines verò, qui manent* Extra Foreſtam, *non veniant de cætero coram Juſticiariis noſtris de foreſta, per communes ſummonitiones*, &c. where by theſe Words *Extra Foreſtam*, it may be inferred, That every Foreſt muſt have certain *Boundaries*, that it may appear who dwell within thoſe Limits, and who not.

19. So in Statute 21. *Ed.* 1. there are theſe Words; viz. *Si quis foreſtarius* in Balliva ſuâ *malefactores aliquos invenerit vagantes*, &c. if they would not yield themſelves, but fly or reſiſt, and are killed, the Foreſter ſhall not be guilty of Murder; for, in this Caſe, the Limits of the Foreſt are iſſuable, becauſe the killing of the Offender within the Limits of the Foreſt, or without, makes it Felony or not; therefore the Boundaries ought to be certainly known. *Magna Charta* 117. *b. Raſt. Tit. Foreſt.* 19.

20. But now, by the Statute 17 *Car.* 1. *cap.* 16. the *Meets, Limits, Meers* and *Boundaries* of all Foreſts ſhall be taken, adjudged and deemed to extend no farther than they were commonly reputed

puted, known, uſed or taken to be, *&c.* in the 20th Year of King *James*, and not beyond in any wiſe, any Perambulations, Preſentments, Extents, Surveys, Judgments, Records, Decrees or other Matter or Thing to the contrary notwithſtanding.

That all Meers and Bounds of the Foreſt do belong to the King.

21. 'Tis eſtabliſhed as a Law, *Secundùm aſſiſam Foreſtæ, Anno* 6. *Ed.* 1. *Quòd omnes metæ foreſtæ integræ ſunt Domino Regi. Articulo* 21.

22. But my Lord *Coke* tells us, this muſt be underſtood *quoad juriſdictionem & imperium, & non quoad Dominium*, 2 *Inſt.* 318. Therefore as the Boundaries muſt be apparently known, ſo the Law hath veſted an Intereſt in the King, that they ſhould not be removed or defaced by Fraud.

23. In the *Aſſiſes of Pickering*, *Anno* 8. *Ed.* 3. *fo.* 11. it was adjudged, that a Man may not fiſh in a River which is a Boundary or Meer of the Foreſt, without a Warrant for that Purpoſe, becauſe 'tis Parcel of the Foreſt, and becauſe 'tis a Meer, therefore it belongeth to the King.

24. The *Abbot of Whitby* killed an Hart within the River of *Derwent*, which was within the Meers of the Foreſt of *Pickering*; and he and his Company being indicted, *Quia ceperunt unum cervum in aqua de Dervent, quæ eſt Marchia foreſtæ, & venationem illam ſecum aſportavit*, he was fined and bound to his good abearing of the Foreſt.

25. If a Deer is chaſed in the *Purlieus*, and gets into a *Meer* of the Foreſt and is there kill'd, the Owner of the Dog muſt not have the Deer, becauſe the *Meer* of the Foreſt is Parcel thereof, and the Deer was there privileged before the Dog did ſeiſe or kill it; for as ſoon as his Feet were within the *Meers* of the Foreſt, and before the Dog had hold

hold of it, 'tis the King's Deer and in his Protection, and whoever meddles with it is a Treſpaſſer of the Foreſt.

26. So if any Man hunt or kill the King's Deer in any part of a *River*, *Highway*, &c. being an incluſive Boundary of the Foreſt, he is as great an Offender as if he had hunted and killed in the midſt of the Foreſt, though the Eſtate or Intereſt of the Soil of the Highway be in other men. 2 *Inſt.* 318.

The Difference between infra Regardum Foreſtæ *and* infra Metas Foreſtæ.

27. Theſe Words are often mentioned in the new Ordinances of the Foreſt, made *Anno* 6 *Ed.* 1. *Raſtall Ab. Tit. Foreſt.* 21. but there is a wide Difference between them.

28. For a thing may be done, *infra metas foreſtæ*, and yet *extra Regardum*; but it cannot be done *infra Regardum*, but the ſame muſt neceſſarily be *infra metas foreſtæ*, as for Inſtance;

29. In the 3d *Article* of the ſaid Ordinances, the Words are, *Si quis inventus fuerit extra dominicum boſcum, & infra regardum*, cutting down an Oak ſtanding out of the King's Woods, *& infra Regardum, &c.* There thoſe Words cannot be taken in any other Senſe, but that the Oak muſt ſtand *infra metas foreſtæ.*

30. But in the 5th *Article* the Words are, *viz. Si quis attachiabilis fuerit contra vad. & pleg', debet diſtringi per catalla ſua* infra metas *foreſtæ inventa, &c.* Now in ſuch caſe an Offender may have Cattle diſtrainable, which are *infra metas*, and yet *extra Regardum foreſtæ*; as if the Cattle were in Woods or Grounds, which the King, by ſome Grant or Charter, had exempted from the Charge of the Foreſt. See the Ordinances *in Tit. foreſtæ*, 3, 4, 5, 10, 11, 12, 15, 17.

31. For

31. For in the Time of *Ed.* 1. when *Hugh De Spenser* was Chief Justice in Eyre of all the King's Forests, *Ultra Trentam*, when the Perambulations of the Forests were made, there were several Woods within the Limits of the Forest exempted out of the *Regard*,: This appears by the Claims and Charters shewed and pleaded in several *Iters*.

32. And I have seen the like of several Forests, *Citra Trentam*, in the Reign of *Ed.* 1. when *Adam de Valentia*, Earl of *Pembroke*, was Chief Justice in Eyre of all those Forests: So that there are some Woods within the Bounds and Limits of the Forest which are not part of the Forest itself.

33. As for instance, *Walwood* in *Essex* was formerly within the Forest of *Waltham*, and yet no part of the Forest, nor within the *Regard* thereof.

34. So likewise *Havering* Park is *infra metas forestæ de Waltham*, but yet out of the *Regard* thereof, and no part of the same.

35. So if a Man hath a Manor to which a Wood doth belong, which is *infra metas forestæ*, or inclosed in the Forest, and yet such Wood is out of the *Regard* of the Forest, in this case he must make his Claim in these Words; viz. *Gilbertus de Acton clamat tenere Boscum suum de Trovesdale, pertinen' ad manerium suum de B. extra regardum forestæ*, viz. *illum Boscum, qui est ex parte Boreali, &c.* And so recite all the Limits and Boundaries thereof.

36. But all such Woods and Lands which are *Parcel* of the Forest, are within the *Regard* thereof, and all such as are within the *Bounds* of the Forest, and no part thereof, are out of the Regard.

37. *Docent nos mensores agrorum tria esse agrorum genera.* 1. *Divisum & assignatum quem limitatum vocat Florentius jurisconsultus, quia manufactos limites pro finibus habet.* 2. *Assignatum per universitatem sive mensurâ comprehensum, putà per Centurias & jugera.* 3. *Arcifinium qui inde dictus, docente Varrone, quòd fines*

fines habet arcendis hoſtibus idoneas, id eſt, naturales, ut ſunt flumina & montes : Grot. de jure Belli & pacis. Lib. 2. pag. 3. ſect. 16.

38. The Grand Jury, Verderors, Regarders and other Officers of the Foreſt of *Waltham*, had formerly *preſented* the Meets and Bounds of that Foreſt to be from *Bow-Bridge* to *Lateward-Bridge*, and from *Stanes-Street* to the *Thames*; and, many Years afterwards, there being ſome Controverſie about the *Boundaries* of the Foreſt, a Juſtice-Seat was held at *Stratford-Langton*, *Anno* 10. *Car.* 1. before the Earl of *Holland*, Chief Juſtice in Eyre, aſſiſted by the Lord Chief Juſtice *Fynch*, Juſtice *Jones* and *Vernon*, and *Barkeley*, and Baron *Trevor*; and upon due Conſideration had of ſeveral Records, it was adjudged, That the *Meets* and *Bounds* ought to be ſettled according to that *Preſentment*, not meerly becauſe they were preſented ſo to be, for they all agreed, that the *Preſentment* might be *traverſed*; but for the Reaſons following, they were of Opinion, that a *Traverſe* was not to be allowed againſt them.

39. *ſſ.* 'Tis enacted by the Statute, *Charta de Foreſta*, That all other Mens Woods (but the King's) which were afforeſted before the Coronation of *H.* 2. were to be viewed by good and lawful Men, and then *ſtatim diſafforeſtentur.*

40. So that before the Diſafforeſtation 'tis expreſly required, that the Woods ſhould be viewed by good and lawful Men: This was eſſential and neceſſary in order to the Diſafforeſtation.

41. Now upon the Conſtruction of the Statute, it was requiſite there ſhould be a Commiſſion out of Chancery; and by vertue thereof, a Verdict being found, upon the Oath of twelve men, or more, which were the *Meets* and *Bounds* of the Foreſt, and that Commiſſion and Verdict being returned into Chancery, and confirmed by the King,

King, and a Proclamation being made for the Disafforestation according to the Inquisition; then such Lands and Woods which were other Mens Lands and Woods, and which were afforested, *statim disafforestentur*, and until that was done the Lands continued Forest still.

42. But if, at the Time of the Afforestation, any Lands were the King's, and afterwards alienated from the Crown, before that Statute was made, they were not to be disafforested.

43. Now since the Statute enacts, that other Men's Lands shall be disafforested, and that to be upon a Perambulation and View as aforesaid, the Subject may demand a Writ of Perambulation *de jure*, and the King in Justice cannot deny it; for when a Thing is granted, all Things which conduce to the obtaining it, are in like manner granted.

44. So that when a Perambulation is duly made, returned and proclaimed, the same is peremptory and binding against the Subject; and if it was not right and truly made, the Subject would not, *de jure*, claim, or demand another, but the King might grant another, *ex gratia*; and after the same was executed, it would take away the Force of the first, though it was against the King himself; but if there had been no Perambulation at all, the same continueth Forest still, and the Subject may, at this very Time, demand a Writ of Perambulation *de jure*.

45. The Judges having agreed upon these Preliminaries, declared their Opinion, with Application to the Case in Question.

46. *ff.* There was a *Perambulation* of this Forest duly made and returned, *Anno* 12. *H.* 3. within three Years after the making of *Charta de foresta*; which Perambulation did agree with this very *Presentment*; and this is binding to the Subject until

set

ſet aſide by a ſubſequent Perambulation duly made and returned.

47. 'Tis true, there was another Perambulation made *Anno* 28. *Ed.* 1. and returned into *Chancery*, which took away from the Foreſt many things contained in the firſt Perambulation, and this was confirmed in Parliament; but by a ſubſequent Statute made *Anno* 34. *Ed.* 1. which was now produced and exemplified under the Great Seal, that ſecond Perambulation was repealed and revoked: And for a further Confirmation thereof, a Judgment was produced in *B. R. Anno* 2. *R.* 2. in a caſe between the Biſhop of *Winton* and others, where, in the Pleadings, it appeareth, that the Statute 34 *Ed.* did repeal the former Statute, *Anno* 28. *Ed.* 1. and then conſequently the former Perambulation, *Anno* 12. *H.* 3. muſt be revived and continue in Force, and is peremptory, and cannot be traverſed.

48. Neither can the Subject demand a new Perambulation *de jure*, but the King may grant one *de gratiâ*; ſo Judgment was given by the Chief Juſtice in Eyre, that the Meets and Bounds of this Foreſt ſhould be according to the Perambulation of 12 *H.* 3.

49. Some Diſcourſes there were amongſt the Judges, whether a Perambulation allowed by the King, was not peremptory, as well to him as to the Subject, but they differed in Opinion as to that Matter.

Bridges

Bridges in Forests.

See { *Nuſance*, 3. 13. / *Wood*, 51.

IN *Itinere Windſor*, *Jones Rep.* 279. one *Clifton* was preſented for ſelling and carrying away ſeven Timber-Trees: He ſhew'd to the Court, That they were felled to repair ſome Bridges in the Foreſt which the King ought to repair, and that the Lops were ſold to pay for the Workmanſhip, which was affirmed by the Verderors to be ſo employed; and yet for the undue way of taking them he was fined 5 *s.*

In eodem itinere, ſo. 273. it was preſented, that *Lodden Bridge* in the Manor of *Sunningbill* was in decay, which the King uſed to repair as Lord of the ſaid Manor, the greateſt part whereof was conveyed to Mr. *Halſtead*; and the Attorney-General *Noy* moved, that he might be indicted to make him repair it *ratione tenuræ*, for the King doing it before as Lord of the Manor, they that have the ſaid Manor now muſt do it.

Mr. *Halſtead* ſhewed that many others had purchaſed part of the Manor Lands which are liable to theſe Repairs, and deſired he might have Contribution of them, and then he would repair; but it was anſwered, That the Court might compell him alone, and he is to ſeek his Remedy at Law for Contribution, and they are not to ſuffer the Bridge to be out of Repair till it be diſputed and determined between him and others, whether they are to be contributary or not: And this was Mr. *Newly*'s Caſe for *Bow-Bridge* in *Waltham*-Foreſt, who was fined 100 *l.* for his Neglect, and ordered to repair it, and commited till he paid his Fine, which was ordered towards the Repair of the

the Bridge, though there was, at that very Time, an Order in the Court of *Exchequer* for him to have Contribution, and Suits likewiſe depending there for that Purpoſe, for Bridges are of Neceſſity, and may not expect Ends of Suits, but muſt have preſent Repairs.

Mr. *Halſtead* offered to enter into Bond to re-repair it ſufficiently by a certain Day, which the Court accepted, and ordered the Verderors to view the Repairs, and gave him leave to fell Timber in his own Woods for that purpoſe.

Buck.

The Buck is the firſt Beaſt of Chaſe, and is called,

1	Year	*a Fawn.*	4	Year	*a Sore.*
2		*a Pricket.*	5		*a Buck of the firſt Head.*
3		*a Sorel.*	6		*a Buck.*

THIS Seaſon beginneth at *Midſummer*, and laſteth till *Holy-Rood*-Day.

The Terms of Hunting are,

A Brace or Lear of Bucks.
Diſlodge the Buck.
A Buck groaneth.
A Buck goeth to Rut.

His Treading or Footing is called, the View.
His Tail is called, the Single.
The round Roll of the Horn next the Head is called the Burr.
The main Horn is called, the Beam.
The loweſt Antler is called, the Branch.

The next are Advancers.
The next Palm.
And the top is called Spellers.
The Ordure is called Feumets or Feumiſhing.

Chaſe.

See *Buck*, 1.
Common, 13.
Dogs, 41, 42, 43.
Foreſt, 7, 8, 33, 37, 38, 39, 43, 83, 87, 90, 92, 93, 95.
Hunting, 28.
Wood, 23, 31.

1. A Chaſe, in one Degree, is the ſame as a *Park*, only a Park is encloſed, and a Chaſe is always open: It differs from a *Foreſt* in three Things; *viz.* in particular Laws, in particular Officers, and in certain Courts, which are incident to a Foreſt, for the better Execution of thoſe Laws.

2. For a *Chaſe* hath no particular Laws proper to it alone; and therefore all Offenders in Chaſes are puniſhable by the Common Law, and not by the Laws of the Foreſt.

3. Neither hath a Chaſe any ſuch Officers as a Foreſt, for it hath neither *Verderors*, *Foreſters*, *Regarders* or *Agiſtors*, but only Keepers and Woodwards.

4. Neither hath it any Courts of Attachment, Swanimote nor Juſtice-Seat, and thoſe Officers which are called Keepers in a Chaſe, are called Foreſters in a Foreſt.

5. And thoſe Chaſes which never were any part of the Foreſt can have no Purlieus, and conſequently

ly the Caſe in *Dyer* 326. muſt be miſtaken. 4 *Inſt.* 303.

6. The Liberty of a *Free Chaſe* is next in degree to a *Foreſt*, but that being the higheſt and greateſt Franchiſe, doth comprehend a *Chaſe*, a *Park*, and a *Warren*; and for that Cauſe the Beaſts of Chaſe, and the Beaſts and Fowls of a Warren, are privileged within the Foreſt; but a Chaſe is not a Foreſt, 'tis only a part of it; and therefore the killing, hurting or hunting any of thoſe Beaſts or Fowls of Chaſe, Park or Warren within the Boundaries of the Foreſt, is a Treſpaſs againſt the Laws thereof, and to be puniſhed by thoſe Laws only.

Which are Beaſts of Chaſe.

7. The Book called, *Antiquitas Britannia*, fo. 43. tells us, That theſe are five Wild Beaſts called Beaſts of Chaſe; *viz.* The Buck, the Doe, the Fox, and formerly the Martern and the Roe, of which there are none now in *England*.

8. *Hollingſhed*, in his Deſcription of *England*; *fo.* 206. *b.* and the Book of St. *Alban's*; *fo.* 30. and Serjeant *Fleetwood* in that Collection which he publiſh'd of the *Foreſt Laws*, all agree in this.

The Difference between Beaſts of Chaſe, and thoſe of the Foreſt.

9. As there is a Difference between a Foreſt and a Chaſe, ſo there is between the Beaſts of Foreſt and of the Chaſe.

10. The Beaſts of the Foreſt are *tantùm ſylveſtres*, but thoſe of the Chaſe are *Campeſtres tantùm*. *Treberne*, fo. 8. *Heſket*, fo. 8. 11.

11. The Beaſts of the Foreſt frequent the Coverts in the Day, and feed on the Lawns, Meadows and Paſture-Grounds in the Night, and therefore they

they are called *Sylvestres*, because they are oftner in the Woods and Coverts, than in the Plains.

12. The Beasts of the Chase frequent the Fields, Hills and Mountains in the Day-time, and the Valleys, Corn-Fields and Meadows in the Night, and therefore they are called *Campestres*, because they frequent the *Fields* more than the Woods.

13. As there may be a Liberty within a Liberty, so a Man may have a Chase in the Forest; and if the Owner of such Chase kill or hunt any Stag or Red Deer, or any other Beast which is no proper Beast of the Forest, he is finable. *Fleta*, 2. 24.

14. And if a Man hath a Chase adjoining to a Forest, if he deny the Keepers of the Forest to fetch back the hunted Stag, this is finable: but Red Deer may be in a Chase by special Claim.

The Petition of the Bishop of Coventry and Litchfield against the Justices of the Forest, and Judgment for a Free-Chase.

"ROgerus Coventr' & Litchfield' Episcopus quer-
"itur Domino Regi de hoc, quod in ultimo
"itinere *Regis* extrah', & locorum istorum Justic'
"Domini Regis de Foresta, in Com' Stafford',
"iidem Justic' boscos ipius Episc' de dominicis suis
"de Cannock & Ruggeleigh, in manum Domini
"Regis seisierunt, & in manum Domini Regis
"adhuc detinent injuste, & ad grave damp-
"num suum, & exhæredationem Ecclesiæ suæ
"rum de Coventr' & Litchfield manifestum, &c.

"Et Rogerus, & alii Justic' socii sui veniunt & re-
"cordantur quod in itinere prædict' per viridar'
"forestar', & alios fideles Domini Regis quæ quam
"eis præsentatum fuit, quod prædict' Episcopus
"Dominum Regem, & progenitores suos per ip-

sum

" ſum Epiſc' & prædeceſſores ſuos purpreſtabantur,
" & à tempore quo, &c. bene licet. Juſtic' de fo-
" reſtâ in itineribus ſuis purpreſturas ſuper Domi-
" num Regem aut progenitores ſuos factas infra
" bundas Foreſtæ ſuæ per Aſſiſam Foreſtæ in fine
" itineris ſui capere in manum Domini Regis, &
" retinere, & ea ratione boſcos præd' eò quod non
" ſunt infra bundas Foreſtæ, & ſuper Dominum
" Regem & Progenitores ſuos purpreſtabantur, ut
" præd. eſt, in manum Domini Regis ſeiſire fece-
" runt, &c.

" Et Epiſc' bene cognoſcit quod boſci præd'
" ſunt infra metas Foreſtæ, ſed dicit quod Domi-
" nus Rex Ricardus conſanguineus Domini Re-
" gis nunc dedit, & chartâ ſuâ confirmavit Eccleſiæ
" beatæ Mariæ, & beati Cedde de Litchfield, &
" Hug' quondam Epiſc' Coventr' prædec' ſuo &
" ſucceſſoribus ſuis Villam de Ruggelegh, & Vil-
" lam de Cannock, cum Eccleſiis hundr' & om-
" nibus aliis libertatibus & pertin' ſuis, habend' &
" tenend, in liberam puram & perpetuam elee-
" moſynam per chartam ſuam quam profert in
" hæc verba.

" Ricardus Dei Gratia Rex Angliæ, &c. Archi-
" epiſc' Sciatis nos dediſſe, & hac præſenti chartâ
" noſtrâ confirmaſſe, pro Redemptione peccato-
" rum noſtrorum, &c. & pro anima Patris noſtri,
" & Parentum noſtrorum, Eccleſiæ beat' Mariæ
" & beati Cedde de Litchfield, parchamentum
" primum & Hug. Epiſc' Coventr' & ſucceſſori-
" bus ſuis Epiſcopis Coventr' Villam de Rugge-
" legh, & Villam de Cannock, cum Eccleſiis,
" hundredis, & omnibus libertatibus, & pertin'
" ſuis, habend' & tenend' in liberam puram &
" perpetuam eleemoſynam. Quare volumus & fir-
" miter præcipimus quod præfatus Epiſc' & omnes
" ſui ſucceſſores poſt eum habeant & teneant
" præd' Villas in puram & perpetuam eleemoſynam

" cum

" cum Eccleſiis, hundredis, & omnibus aliis pertin'
" ſuis cum ſacha & ſocha, thol & them infangene-
" thef, & benè, purè, liberè, quietè, integrè &
" plenariè & honorificè in boſco & plano in pratis
" & paſcuis, & paſtur' vivar' & ſtagnis, & mareſ-
" cis in aquis, & molendinis, in viis, in ſemitis, in
" homagiis & releviis, in ſerviciis & omnibus aliis
" rebus, & locis in burgis, & extra burgam, &
" cum omnibus libertatibus, & liberis conſuetud'
" ſuis. Teſtibus, &c. Dat' per manum Willi. Elienſis
" electi, 4. die Decemb. Anno Regn noſtri primo.

" Præterea, idem Dominus Rex Ricard' con-
" ceſſit, & chartâ ſuâ confirmavit præd' Hug' præ-
" dic', &c. Ut omnia maneria ſua, & omnes ter-
" ræ ſuæ, & omnes homines ſui, & omnia ma-
" neria, & omnes terræ, & omnes feodi Eccleſiæ
" Coventr' & Litchfield, de Ceſtr' & Salop, & de
" Gnoweſal, & omnium Eccleſiarum ſuarum libera
" eſſent in perpetuum, & quieta de Foreſta, & de
" placitis Foreſtæ, de vaſtis, & aſſartis regardis Fo-
" reſtæ, per quandam aliam chartam quam profert
" in hæc verba.

" Ricardus Dei Gratia Rex Angliæ, &c Archie-
" pis', &c. Sciatis nos conceſſiiſſe, & præſenti Char-
" tâ noſtrâ confirmaſſe dilecto, & familliari noſtro
" Hug. Coventr. Epiſcopo, & ſucc' ſuis Epiſc.
" Coventr' ut omnia maneria ſua, & omnes terræ
" ſuæ, & omnes homines ſui, & omnia maneria
" omnes terræ & omnes feodi Eccleſiæ de Co-
" ventria & Litchfield, & de Ceſtria & de Sa-
" lop. & de Gnoweſal, & omnium Eccleſiarum
" ſuarum in perpetuum libera ſint & quieta de
" murdro, & latrocinio, & Shir' & hundr' & de
" ſectis Shir' & hundr' & auxiliis vic' de Foreſta, &
" placitis Foreſtæ de vaſtis & aſſartis rewardis Fo-
" reſtæ, & omn' aliis operibus tam Caſtellorum
" quam vivariorum & ſtagnorum, & omnibus placi-
" tis, & omnibus querelis. Quare volumus, & firmi-

" præcipimus ut omnia maneria, & omnes terræ, " & omnes feodi præd' Epiſc. & ſucceſſorum ejus, " ac præd' Eccleſiarum inde in perpetuum libera " ſint, & quieta. Teſtibus, &c. Dat. per manum " Will' Eliensis Electi Cancellarii, Anno Regni " ſui primo apud Cantuar. 30 die Novembris.

" Unde dic' quod ipſe & prædec. ſui à tempore " præd' Hug' & poſt confectionem præd' carta- " rum semper' præd' boſcos quietos de Foreſtâ, " Foreſtariis, Viridariis & aliis miniſtris Foreſtæ " Domini Regis, uſque ad ultimum iter præd'. " Idem etiam Epiſcopus quæſitus ſiquid clamet in " venatione præd' boſcorum dicit, quod omnes " prædec' ſui, & ipſe ſimiliter poſt confectionem " præd' Chartarum, venari ſolebant in præd' boſcis, " & capere & fugare pro voluntate ſua feras in " eiſdem boſcis de Foreſta Domini Regis venient. " uſque ad prox. iter præd' & petit quod Domi- " nus Rex velit permittere ipſum & Eccleſias ſuas, " uti & gaudere ſtatu, & libertatibus quibus hacte- " nus ipſe & prædeceſſores ſui, ut de jure Eccle- " ſiarum ſuarum uſi ſunt, & per præd. conceſſiones " prædict' Regis Ricardi anteceſſoris ſui, &c.

" Et præd' Juſticiarii dicunt quod Dominus " Henricus Pater Domini Regis nunc, poſt con- " fectionem præd' Chartarum Domini Regis Ri- " cardi fuit in ſeiſina præd' maneriorum & boſco- " rum; & ſuper hoc ſcrutatis rotulis & brevibus de " Scaccario de tempore præd' Henrici Regis inve- " niunt brevia ſubſcripta, &c.

" Henricus Dei Gratiâ Rex Angl' Dominus " Hib. & Dux Norman' & Aquit' Comes Ande- " gavia Vic. Staff' ſalutem. Scias, quod reddimus " venerabili Patr. à Coventr. & Litchfield Epiſc' " maneria Cannock & Ruggelegh, quæ Rex Ri- " card' Avunculus noſter dedit bonæ memoriæ Hug. " de Novant quondam Coventr. Epiſc, & ideo tibi " præcipimus, quod de præd. maneriis ipſi Epiſc'

" plenam

" plenam ſeiſinam habere facias. Teſte me ipſo
" apud Waltham, 17 die Aprilis, Anno Regni,
" noſtri quartodecimo.

" Henricus Dei Gratia, Rex Ang. Dominus, Hib'
" & dux Norman' & Aquit' & Comes, Ande-
" gaviæ Baronibus ſuis de ſcaccar' ſalutem Com-
" putate Vic' noſtri Stafford in firma Com' ſui tri-
" ginta ſolidos, & ſex denar. Blanc' de mediet'
" Anno Regni, 14. pro manerio de Cannock, &
" de Ruggelegh, quæ reddimus venerabili Patri
" à Coventr. & Litchfield Epiſc. Computate etiam
" eidem Vic' ſexag & unum ſolid' blanc' de
" Regn. noſtro 15. pro eiſdem maneriis, & ſic de
" anno de cætero, &c. Teſte meipſo apud Wal-
" tham 17. die Aprilis, Anno Regni noſtri quarto-
" decimo.

" Et quia præd. Charta per quam præd. Rex
" Ricardus dedit præd. maneria de Ruggelegh, &
" Cannock præd. Hug. Epiſc & ſucceſſoribus ſuis
" poſterioris datæ eſt, quam ſit Charta ejuſdem
" Regis, per quam ipſe Epiſcopus clamat ipſa, &
" omnia maneria ſua, terras & homines ſuos eſſe
" quietos de Foreſta, prout per datas earundem
" patet; Nec idem Epiſcopus alia maneria ſua ſeu
" terras clamare poteſt eſſe quieta de Foreſta
" quàm illa quæ tempore confectionis illius Char-
" tæ fuerunt in ſeiſina præd. Hug. Epiſcopi datus
" eſt dies præd. Epiſc' de audiend' judicio ſuo à die
" Paſchæ in unum menſem ad Parliamentum, &c.
" Et idem Epiſcopus ponit loco ſuo Gilbertum de
" Kirkby, vel Robertum de Pipe. Et præceptum
" eſt per Dominum Regem, quod Regin. de
" Grey, Bogo de Knovil, & Ricardus de Hole-
" brook, interim inquirant per quas metas & di-
" viſus prædicti boſci prædict. maneriorum divi-
" duntur ab aliis boſcis qui ſunt Baroniæ ipſius
" Epiſc. & ſimiliter à Foreſta Domini Regis di-

" ſtinct' & appert', & planè certificent Dominum
" Regem ad eundem terminum, &c. Et Dominus
" Rex præcipit quod boſci præd' interim remane-
" ant in eodem ſtatu quo nunc ſunt, &c. Poſtea ad
" Parliamentum ipſius Domini Regis apud Weſt-
" mon' poſt Paſcha, Anno Regni nunc Regis de-
" cimo octavo, venit præd' Epiſcopus in propriâ
" perſonâ ſuâ, & reddidit ipſi Domino Regi præd'
" boſcos, ut jus Domini Regis, & idem Dominus
" Rex de gratiâ ſuâ ſpeciali conceſſit & dedit eoſ-
" dem boſcos præd' Epiſc' per eaſdem metas bun-
" das & diviſus, per quas ipſe Epiſcopus & prædec'
" ſui à tempore confectionis præd. Chartæ præd'
" Domini Regis Ricardi boſcos illos tenuerit, ha-
" bend' & tenend' eidem Epiſc. & ſucces' ſuis, &
" Eccleſiæ ſuæ, ſci' Cedde de Litchfield, in libe-
" ram, puram, & perpetuam eleemoſynam, ut li-
" beram Chaceam in perpetuum. Ita quòd bene
" licet ipſi Epiſc' & ſucces' ſuis boſcos illos inclu-
" dere, & incluſos tenere, & parcos inde facere
" pro voluntate ſuâ abſque hoc quod ſaltatoria
" faciant in iiſdem, ſeu rechia habeant ad vena-
" tionem ipſius Domini Regis de Foreſta ſua ca-
" piend' & ita quod boſci illi omnino quieti ſint
" de Foreſta, & de placitis Foreſtæ, & quòd nec
" Juſtic' ipſius Domini Regis ſeu Sen. de Foreſta
" qui pro tempore fuerint Foreſtarii, Virida-
" rii, Agiſtatores, Regardatores ſeu alii miniſtri
" quicunque fuerint in Boſcis præd' per metas,
" bundas & diviſus ſupradictas ſe aliqualiter intro-
" mittant ſeu officium ſuum exerceant quoquo mo-
" do, licèt præd' boſci ſub ſuis metis, bundis, &
" diviſis præd' fuerint infra antiquas metas Foreſtæ
" ipſius Domini Regis de Cannock: Et pro hac,
" &c. idem Epiſcopus cognovit ſe tenere Domino
" Regi in mille libris ſtirlingorum. 4 *Inſt.* 302.

Chief

Chief Juſtice in Eyre.

1. THE Chief Juſtice of the Foreſt is an Officer of great Honour and Authority, and the Office is to be executed by a *Peer* who is always of the Privy-Council.

2. There is but One Chief Juſtice on this ſide *Trent*, and he is called *Juſticiarius itinerans Foreſtæ, &c. citra Trentam*; and there is another called, *Itinerans omnium Foreſtarum, &c. ultra Trentam*, who, as my Lord *Coke* tells us, is commonly a Man of greater Dignity than Knowledge in the Laws of the Foreſt; and therefore where Juſtice Seats are to be held, ſome other Perſons, whom the King ſhall appoint, are aſſociated to him, who, together, are to determine *omnia placita Foreſtæ*, with a Patent of *ſi non omnes*, and a Writ *de admittendo*, and then the Chief Juſtice in Eyre and thoſe Aſſociates are *Capitales Juſticiarii Foreſtæ*, ſo called in reſpect of the Verderors and others, who, to ſome Purpoſes, have judicial Places. 4 *Inſt.* 314.

3. *Anno* 10 *Car.* 1. a Suſtice-Seat was held at *Dean* for the Foreſt of *Dean* in *Glouceſterſhire*, before Juſtice *Jones*, Baron *Trevor*, and Serjeant *Bridgman*, being deputed by the Earl of *Holland* Chief Juſtice in Eyre, and at the Return of the Summons *Bridgman* adjourned the Court to *Glouceſter-Caſtle*, and the Chief Juſtice in Eyre being there preſent, and the ſaid Judges and Serjeant being commanded by the King, by a Letter under his Sign manual, to attend to give their Advice in Matters of Law, the Earl's Commiſſion was read and the Letters enrolled, and the Officers of the Foreſt, and the Reeve and the four Men were called, who, together with the Foreſters, were of the Petty-Jury, and a Grand Jury was ſworn of the County, and *Jones* gave the Charge, and the Verderors preſented their Rolls,

Rolls, and the Offenders were fin'd by the Chief Juſtice according to their Offences.

4. When any ſuch Peer is made Chief Juſtice in Eyre of the Foreſt by the King's Commiſſion, he hath as great Authority as any other Juſtice in Oyer, and more; for then he may puniſh all Treſpaſſes of the Foreſt according to the Laws of the Foreſt, and may hear and determine all Claims of Liberties and Franchiſes, as to have Parks, Warrens, *&c.*

5. He may alſo determine all Claims to be quit of *Aſſarts*, and *Purpreſtures*, the Claims of Leets, Hundreds, Felons Goods, Waifs and Fugitives, and all other Liberties within the Foreſt, and likewiſe of thoſe who claim to kill Hares and other Beaſts of *Chaſe* there, for Men may juſtifie the doing many Things in the Foreſt by lawful Claims, which would be otherwiſe unlawful for them to do; but then thoſe Claims muſt be ſuch which have been allowed before the Juſtice in Eyre within the time of Preſcription: And if a Juſtice-Seat do Wrong or any Injuſtice, by allowing a Claim where it ought not, the Record may be removed by *Certiorari*, (which, in the Foreſt Law, is called a *venire facias Recordum*) into the *King's-Bench*, there to be determined. 4. *Inſt.* 294. And if the Court will not allow a lawful Claim, the Party grieved may have a Writ *de Libertatibus allocandis* directed to the Juſtices of the Foreſt. 4 *Inſt.* 237. and in caſe of an erroneous Judgment, a Writ of Error lies.

6. The Juſtices of the Foreſt may puniſh thoſe who are indicted at the Swanimote, and preſented before them at the Seſſions, and this by Fine and Impriſonment at their Diſcretion.

7. And ſuch an Indictment ſhall not be traverſed becauſe it is preſented by more than twelve Perſons.

8. But

8. But other Justices in Oyer and Justices of Peace, cannot determine Trespasses done in Forests, though such Trespasses are presented before them by way of Indictment; so if they intermeddle in such Cases, the Party may traverse the Indictment, which he could not do if it was taken in the *Spaenimote*.

9. He hath likewise an absolute Authority to determine all Offences either in *Vert* or *Venison*; and those cannot be determined before any other Justices, excepting those who have a Commission under the Great Seal to assist the Chief Justice in Eyre in that Place.

10. This appeareth by *Charta Foreſtæ cap.* 16. viz. *Nullus Conſtabularius, Caſtellanus vel Ballivus teneat placita de Foreſta, ſive de viridi, ſive de venatione; ſed quilibet foreſtarius de feodo attachiet placita de Foreſta, tam de viridi quam de venatione, & ea præſentet viridariis provinciarum, & cum irrotulata fuerint, & ſub ſigillis viridariorum incluſa, præſententur capitalibus juſticiariis noſtris de Foreſta, cùm in partes illas venerint ad tenendum placita foreſtæ, &* coram eis terminentur: By which laſt Words all other Justices are prohibited to hear and determine Offences of the Foreſt.

11. For this Statute is in the *Negative* of the Common Law, and ſo taken by all the Judges, *Anno* 21. *H.* 7. *fo.* 22. where the Caſe was thus.

12. *ſſ.* In Treſpaſs *de Malefactoribus in parcis*, the Plaintiff declared, that the Defendant *intravit in quandam foreſtam:* And it was the Opinion of the Court, that the Action did not lie, unleſs the Treſpaſs had been done in a Park; for the Statute of *W.* 1. *cap.* 20. extends only to *Parks*, and muſt be taken in the ſtricteſt Senſe.

13. So Treſpaſſes which are done in a *Foreſt* are puniſhable only by *Charta Foreſtæ*, and by no other manner.

14. From

14. From which it may be inferred, That the Statute *de Malefactoribus in parcis* doth not extend to a *Forest*; and therefore that Statute which was made to reform Injuries done in the one, doth not extend to punish Trespasses done in the other; and if Trespasses done in a *Forest* are punishable only by *Chartâ Foreſtæ*, and not in any other manner, as it appears in *cap.* 16. then Offenders in the Forest must be punished according to that Statute.

15. So likewise, *Anno* 21. *H.* 7. *fo.* 30. a Man was indicted before the Justices of Peace for killing an *Hart proclaimed*; and the Indictment was challenged, because it did not set forth in what Place the Proclamation was made, nor in what Place the Hart was kill'd; for if it was kill'd without the *Boundaries* of the Forest, it was no Offence, but lawful for him to do it: And *Fineux*, Chief Justice, who gave the Rule of the Court, was of Opinion that this Matter might be pleaded to the Jurisdiction of the Court, because it was to be determined by the Justices of the Forest, and not elsewhere.

16. From which it may be likewise inferred, that Offences committed in the Forest are to be tried by the Justices of the Forest, and the Offenders are to be punished by the Forest-Laws *only*; because those Laws are appointed for that Purpose, and differ from all other Laws.

17. (2) If a Man hath committed an Offence in the Forest, either in *Vert* or *Venison*, and is indicted for it before any other Justices than the Justices of the Forest, or in any other Place, then he may plead that Matter to the Jurisdiction of the Court, and shew that the Offence was done in such a Forest, and that 'tis determinable before the Justices of the Forest, and not elsewhere.

18. Moreover, by the Statute *de Ordinatione Foreſtæ*, it appeareth, That all Proceedings against Offenders for Things done in the Forest, are void, if such Proceedings are had in any other Place

than

than before the *Chief Juſtices* of the Foreſt. See *Kellewey, fo.* 150.

19. He is to make out his Warrant or Precept directed to the Sheriff of the County in which the Foreſt is, and where the *Juſtice-Seat* is to be holden; thereby commanding him to *ſummon* all Archbiſhops, Biſhops, Earls, Barons, Knights and other their free Tenants who have any Lands or Tenements within the Bounds of the Foreſt; and to ſummon four Men and the Reeve, and alſo out of every antient Borough within the Bounds of the Foreſt, twelve good Men and other Freeholders, who ought to appear before the Chief Juſtice in Eyre, that they ſhould accordingly appear on a particular Day.

20. He is likewiſe to command the Sheriff openly to proclaim in all Boroughs, Towns, Fairs, Markets and other publick Places throughout the County, that all Perſons who *Claim* to have any Grants of *Liberties, Franchiſes* or free Cuſtoms in the Foreſt, to appear before the Chief Juſtice in Eyre, or his Deputy, at the ſaid Day and Place, to ſhew what Liberties they claim; and that all Perſons who are attached for *Vert* or *Veniſon* in the Foreſt after the laſt Court, and all Pledges and Manucaptors who were bound to appear, that they ſhould appear accordingly: And that the Sheriff with his Bailiffs be there alſo to certifie what they had done, and alſo to execute the Office of a Sheriff in theſe and ſuch like Matters concerning the ſame, the Form of which Precept is as follows:

The Form of the Precept or Warrant of the Chief Juſtice in Eyre.

21. *Ff. Thomas Lovell nobilis ordinis Garterii miles, Juſticiarius Itinerans omnium foreſtarum Domini Regis in Angliâ, tam citra Trentam quàm ultra, Vic. Eſſex Salutem: Ex parte dicti Domini Regis tibi præcipio,*

præcipio, quòd ſummoneas per bonos ſummonitores, omnes Archiepiſcopos, Epiſcopos, Abbates, Priores, Comites, Barones, Milites, & eorum liberos tenentes, qui terr' aut tenementa habent infra metas foreſtæ Domini Regis de Waltham in Com' Eſſex, & de qualibet villâ & villatâ infr' eaſdem metas, quatuor homines, & prepoſitum, & de quolibet burgo infra metas ejuſdem foreſtæ duodecim probos & legales homines, & omnes alios qui coram Juſticiariis placita foreſtæ ten' venire ſolent & debent, quòd ſint apud Waltham die Lunæ prox' poſt feſtum ſancti Petri Apoſtoli proxim' futur', coram me præfat' Juſtic' Itinerante, vel meo in hac parte deputato, audituri & facturi ea quæ ad placita foreſtæ ibidem pertinent. Et ulteriùs tibi præcipio, quòd per totam ballivam tuam, viz. tàm in Burgis & aliis Villis, quàm in feriis, mercatis, & aliis locis publicis, publicè proclamari facias, Quòd omnes illi quicunque qui per Chartas dicti Domini Regis & anteceſſorum ſuorum progenitor' ſuor', aut alio modo aliquas libertates, ſeu liberas Conſuetud' foreſtæ infra dictam foreſtam habere clamant, ſint coram me præfat' Juſtic' aut meo in hac parte deputato, die & loco prædictis, oſtenſuri quas libertates habere clamant. Et omnes attachiat' pro viridi & venatione infra foreſtam prædictam poſt ultim' placit' foreſtæ tantàm ac eorum pleg' & mainucapt' qui habuerunt diem per manucaptiones coram Juſtic' Domini Regis Itinerant. proxim' illic venient. quòd adtunc ſint ibi coram me præf. Juſtic' ad ſtand' rectè, & ad faciendum ea quæ ſecundùm legem foreſtæ facere debent: Et quòd tu ſis ipſe ibidem cum ballivis tuis ad exequend' & certiorand' me ſuper his & aliis negotiis illæ tangentibus: Et habeas ibi ſummonit' & hoc breve, Teſte, &c.

22. This is the General Summons mentioned *in Chartâ de Foreſtâ*, and there ought to be forty Days Notice between the *Teſte* and the Day of Appearance or firſt Day of the Seſſions, in the ſame Manner as the Juſtices in Eyre at large do make, and

they may hold Pleas of *Quo Warranto* as the other Justices do.

23. He is likewise to issue out a Writ before he holds his General Sessions, directed to the Sheriff as aforesaid, together with a short Abstract of all such Matters as the Regarders of the Forest shall enquire into; and when they have made their Range, and affirmed at the Swanimote, or Court of Attachments, all such Things which they found in their Survey, they are to present the same under their Hands and Seals unto the Chief Justice in Eyre. The Form of this Writ see in Title *Regarder*.

24. There is also another Form of General Summons, which the Justices of the Forest may make, directed to the Chief Warden of the Forest in this Manner:

25. *Thomas Lovell nobilis ordinis Garterii miles, Justiciarius Itinerans omnium forestarum Domini Regis in Anglia, tam citra Trentam quàm ultra, Johan' de Vere Com' Oxon' custod' forestæ Dom' Regis vel ejus locumtenenti in eadem foresta salutem: Ex parte dicti Domini Regis vobis mando, firmiter injungendo, quòd venire facias coram me præfat' Justiciar' apud Waltham die Lunæ proximo post festum Sancti Petri Apostoli prox' futur' omnes Forestarios, Viridarios, Regardatores, Woodwardos, ac alios ministros ejusdem forestæ qui nunc sunt & qui post ultimum placitum forestæ prædict' tent' fuerunt & eorum quemlibet, cum omnibus rotulis, scriptis, monumentis, & attachiamentis forestæ tam de viridi quàm de venatione, quæ post ultim' placitum illud emersa, & non determinat' extiterunt: facias Regardatores Forestæ qui sunt & qui post ultimum placitum prædict' tent' ibidem fuerunt, cum omnibus regardis suis per idem tempus factis & irrotulatis: faciasque insuper adtunc & ibidem omnes Agistatores ejusdem forestæ qui nunc sunt & qui post tempus prædict' fuerunt, & eorum quemlibet, cum omnibus attachiamentis suis & rotulis agistamentor' ad standum inde*

recte

rectè & ad faciend' ea quæ eis & eorum cuilibet secundùm legem foreſtæ injungentur, aut quæ facere debent: facias etiam venire omnes illos qui clamant habere aliquas libertates aut franchesias infra foreſtam prædictam, quòd ſint coram me aut locum meum tenente ad prædict' diem & locum oſtenſur' quomodo clamant habere libertates, franchesias, ſeu privilegia, & quo Warranto: Et quod vos ſitis adtunc & ibidem cum nominibus omnium prædict' miniſtrorum, & hoc breve nobis remittentes, Teſte, &c.

26. It appeareth by this Writ, that the Authority of the Chief Juſtice of the Foreſt differs from the Authority of other Juſtices in Eyre; becauſe thoſe of the Foreſt may make a Deputy to execute their Office, which other Juſtices cannot do; but this is by virtue of the Statute of 32 *H.* 8. *cap.* 35. for before the making that Statute, they could not make a Deputy becauſe their Office is judicial; and yet all the Writs of Summons, before the making that Statute, are to appear *coram Juſticiar. Itinerant. aut ejus Deputat.* 4. *Inſt.* 291.

27. In former Days this great Officer was created by Writ as other Juſtices in Eyre are; but now, by the Statute of 27 *H.* 8. *cap.* 24. he is made by Letters Patent. *Co.* 4. *Inſt.* 291.

The Manner of holding the Court, and what Offences are puniſhable there.

28. This Court cannot be kept oftner than every third Year, 4 *Inſt.* 291. and though the Treſpaſſes of Offenders are preſented at the *Court of Attachments*, and afterwards thoſe Offenders are upon ſuch Preſentments indicted at the Court of *Swanimote*, according to the Statute of 1 *Ed.* 3. *cap.* 8. and according to the Statute *de Ordinatione Foreſtæ*; yet thoſe Courts cannot give Judgment or aſſeſs any Fine; for that muſt be done at the Juſtice-Seat: And therefore the Rolls of ſuch Offences, in both thoſe

thoſe Courts, are to be ſealed with the Seals of the Verderors, who are to keep them until the Juſtice-Seat, and then they are to preſent them to the Chief Juſtice in Eyre.

29. After forty Days Notice given by the Sheriff by Proclamation, as aforeſaid, of holding this Court, and after the Chief Juſtice in Eyre, and thoſe in Commiſſion with him, are come to the Place appointed, then firſt the Commiſſion muſt be read, and the Officers called, and the Freeholders and all other Perſons who were ſummon'd to appear; then there muſt be a ſubſtantial Jury of 24, 20 or 18, choſen out of thoſe Freeholders and others there preſent, who muſt be ſworn truly to inquire and true Preſentment make, of all ſuch Matters and Things which ſhall be given to them in Charge.

30. And becauſe the King may be better certify'd what Offences have been done in the Foreſt ſince the laſt Court, and alſo how and in what Manner thoſe Offenders have been proſecuted, favour'd or puniſh'd, and that he may likewiſe know what Officers have faithfully diſcharged themſelves in their Office as they ought to do, the Chief Juſtice in Eyre, or ſome Perſon learned in the Laws of the Foreſt, and appointed by him, muſt give the Jury a Charge to this Effect following.

The CHARGE.

1. FIrſt, to enquire of all Attachments as well of *Vert* as *Veniſon* ſince the laſt Seſſions, either in the King's Woods or in any Place within the Limits of the Foreſt, and by whom and how ſuch Attachments were made, and whether there hath been any Hunting within ſuch Limits, and if any, then by whom, and whether the Foreſters, or what other Perſon, conſented to ſuch Hunting,

and who hunted with Warrant, and who without, and how often, when and where.

2. Whether any *Attachment* hath been made by Night and who, and by whom were they attached.

3. What *Attachments* have been made in Fence-time, as well of thoſe who have offended, as thoſe who were ſuſpected, and of all others found in the Foreſt ſearching and going in a ſuſpected Manner.

4. If any *Aſſarts*, Waſtes or Purpreſtures have been made ſince the laſt Seſſions, or before, and not preſented, in whoſe Fee the ſame are or were made, whether in the Lands of the King or any other Perſon, and by whom, and who now poſſeſſes the ſame, and how they are encloſed, and what number of Acres.

5. To preſent the Names of ſuch Perſons who have encloſed any Ground adjoining to the Foreſt, and who have enlarged their own Grounds, and ſtreightened the Foreſt by ſetting out their Hedges or Ditches, and to inquire what quantity of Ground is ſo encloſed.

6. If any Perſon hath taken away or deſtroy'd any Mark or Bound of the Foreſt, and who, and when it was done.

7. To inquire of the Bounds and Limits of all Bailiwicks in the Foreſt, and how and in what manner they are bounded; and how the Bailiffs and Foreſters have kept their Walks, and what they claim as belonging to their reſpective Offices, and what they take by vertue thereof, and by what Warrant.

8. If any Mine, Delf of Coal, Stone, Clay, Marle, Turf, Iron or any other Mine, hath been made, and who made it, and where.

9. If any Tanner or White Tawer dwelleth within the Foreſt, and uſes his Trade there.

10. If any Mine hath been made in the Foreſt ſince the laſt Seſſions, or before, and hath not

been presented, and to present the Name or Names of the Persons who made it.

11. If any Church, Town or House hath been built in the Limits of the Forest since the last Sessions, and not yet presented, and by whom built, and how long since, and how many Beasts are pastured in the Forest by reason thereof, to the Prejudice, Hurt and overcharging of the same.

12. If any Swine-House, Neat-House, Sheep-House, or any other House or Inclosure, hath been built within the Bounds of the Forest to the Annoyance thereof, by whom, and on how much Ground, and what it containeth, and how much of the Pasture for the Deer is thereby surcharged and impaired by the Beasts which go in and out of such Houses.

13. If all the Inhabitants within the Forest, as well the Clergy who have Lay-Fees as others, being of the Age of 22 Years, be sworn to be true to the Forest or not, and of their Appearance and Defaults here.

14. If any Foresters, Keepers or other Officers of the Forest, who have any Walks, and are not sworn, to present their Names, and whether they are there or not.

15. If there are any Parks within the Limits of the *Forest* or near it, and how they are enclosed, and what Saltaries and Leaps they have which are prejudicial to the same; or what common Trespassers there are in any of the King's Parks in the County, either with Bows, Arrows, or any other Engine; or whether any Ground hath been ploughed there without Leave, and how much, and by whom.

16. If there have been Waifs or Strays in the Forest since the last Sessions, or before, and not presented, and who had the same, or what Person, and by what Title or Warrant.

17. If any Person hath taken any Swarm of Bees, or any Honey, or Wax in the Forest, how many, how much, and the Value, and who of Right ought to have the same.

18. To inquire who maketh or taketh any Profit of Turbary, if any be within the Forest, and what Ground it is, and whether any Rent ought to be paid for it, and how much the Forest is injured thereby.

19. If any River, Haven or Creek was newly made, by which Wood, Timber, or Venison hath been conveyed by Boat, Barge or Ship, and by whom, and by whose Assistance and Consent.

20. If any Officer hath made any *Scotales*, or gathered any Sheaves of Corn, or done any Extortion or Oppression by colour of his Office, and who, and what is his Offence.

21. If any Person came into the Forest in the Fence-Month to look after Sheep, Hogs or other Cattle, being not sworn to the Assise of the Forest, and who.

22. If the Steward hath kept the Swanimote-Court three Times every Year according to the Laws of the Forest, and taken Presentments, and caused them to be affirmed by the Verdict of 12 indifferent Men, and sealed by the Verderors and other Officers according to the said Laws, or not; and whether the Forty-Day Court hath been kept or not according to the Statute.

23. If the Keeper, Bailiff or Steward hath taken Fines or Amerciaments of Trespassers, or of those who were indicted or suspected for *Vert* or *Venison*; and if they did, then of whom, how much, and what it was; and whether they have caused any Person to be falsly indicted, how, when, and in what Manner.

24. If the Foresters, Verderors, Regarders, Agistors, or others, have concealed any Trespassers, indicted

indicted or ſuſpected, or made any Attachments for their own Lucre, or for Favour, or for either of thoſe Cauſes have concealed Purpreſtures, or any other Thing appertaining to their Office to diſcover, or whether they have appropriated any thing to themſelves which belongs to the King.

25. If any Foreſters in Fee, or other Officers, have taken any Fine or Reward, or Chiminage, or Paſſage, which did not belong to his Bailiwick, or who, by coulour of their Office, make any Collections which are prohibited by the Laws of the Foreſt.

26. If any Perſon doth uſually reſort to the Houſe of any Foreſter to haunt the Foreſt, and what he doth take or receive of the Foreſter, and whether ſuch Perſon is ſuſpended for any Treſpaſs or Offence done in the Foreſt, and who he is.

27. To inquire how the Foreſters have behaved themſelves in their ſeveral Bailiwicks and Offices, and who are profitable to the King, and who not, and for what Cauſe, and if they gave any thing for their Bailiwicks, and to whom; and whether any Foreſter hath been removed by the Steward or Verderor, for what Cauſe and who they were; whether there are more Foreſters in any Bailiwicks than ought to be, or who are not neceſſary for keeping the Bailiwick; and whether they or any of them do ſurcharge their Bailiwicks by undue or too often lodging any Perſon, and who kept their Horſes there three Days and Nights in other Mens Houſes within their Bailiwicks, or without, by reaſon of their Office; and which of the Foreſters have any lewd, miſchievous or troubleſome walking Servant under him to the Charge or Burthen of the Country; and which of them hath made or introduced any new Cuſtom or Innovation in the Foreſt, to the Damage of the King and Burthen of the Country.

28. To enquire, by what Warrant Bailiffs, who are Foreſters in Fee, do hold their Bailiwicks, and which of them pay any yearly Rent or Annuity to the King, and how much for the ſame, and what, of Right, they ought to take and enjoy in the Foreſt to pay the ſaid Rent, and by what Meets and Bounds they ought to hold their Bailiwicks, and what Lands the King hath in each of the ſaid Bailiwicks, and how they are incloſed.

29. If any Foreſter of Fee or any other hath taken any Reward of a Foreſter for his Office, and afterwards removed him and put another in his Place for a new Reward.

30. If any Perſon hath incloſed his Ground, Woods or Warren to the Damage of the Foreſt, or hath afforeſted any of his own Woods without the King's Warrant.

31. Whether any Deer have been found newly dead or wounded paſt Recovery, and whether the fleſh of ſuch Deer hath been given to Hoſpitals adjoining, and if there are none then to the poor, and whether the Verderors or Country can teſtify the ſame.

32. Whether the Head and Skin have been given to the Freemen of the next Town.

33. If any Arrow or Arrows have been found within the Foreſt, and due Preſentment made to the Verderors thereof, that he might enter the ſame in his Roll.

34. If any Greyhounds have been found running in the Foreſt to the Diſturbance of the King's Game, whether the ſame hath been preſented in the Preſentments of the Verderors, to the intent the ſame ſhould be ſent to the Chief Juſtice in Eyre.

35. If all the Dogs within the Limits of the Foreſt have been lawed as they ought to be.

36. If

36. If any Man in Harveſt time, hath kept a Maſtiff or great Dog in the ſaid Foreſt to the Hurt of the Deer.

37 If any Perſon who hath a Grant from the King of free chaſing in the Foreſt, hath, by colour thereof, done any Prejudice to the King.

38. If the King hath granted Liberty to hunt Vermin of Chaſe, *viz.* Foxes, Wild Cats, Polecats or Squirrels in the Foreſt, and by colour thereof any Deer hath been killed.

39. If any Man hath ſeen another taking Deer, and hath not raiſed Hue and Cry to apprehend him.

40. Who keepeth Dogs in the Bounds of the Foreſt, or without, which will kill Deer, Hares or other Beaſts of Chaſe, or doth keep any Engine to take Deer or other Beaſts, and who are Receivers, aiding and conſenting to the ſame.

41. Whether any Deer are or have been taken, and by whom, and whether by Warrant or without.

42. If any have been Offenders in Warrens and Fiſh-pools within the Foreſt.

43. Who hath any Bows, Shafts, Hounds or any other Engines in the Foreſt to the Prejudice of the Beaſts of Chaſe, and who doth uſually enter into the Foreſt with Bows and Shafts.

44. If any Perſon (to whom, by reaſon of his Office, the King hath given any Deer) hath taken more Deer than he ought, and what Foreſter, Officer or other Perſon hath been aſſiſting to the ſame, and whether it was taken in the Sight of the Foreſters or Verderors; who hath taken any Hawks, Pheaſants, Partridge or other Fowl of Warren within the Foreſt, contrary to the Laws thereof.

45. If any hath hunted the King's Deer within ſeven Miles of the Foreſt, at any time within forty Days next before the King's hunting, or forty Days

after; for that the King, before ſuch hunting, or his Commiſſioners appointed to to view the Game, ſhould ſee where the Deer haunt, and becauſe, after hunting, they having been diſturbed with Horns and Men, may return to their Haunts in the Foreſt.

46. If any Purlieu-Hunter do diſorderly hunt, to the Deſtruction of the King's Game in the Foreſt, or kill Deer, or hunt before the riſing of the Sun, or after Sun-ſet, or with any other than his own menial Servants, or hunted on Sundays.

47. If any Purlieu-Hunter foreſtalled the King's Deer, by dead Hay or live Hay; for they may not foreſtall, but let ſlip at the Tail; and if he hath hunted in the Fence-Month.

48. If any Man cometh into the Purlieu, and finding a Deer feeding, goeth againſt the Wind and killeth him with Bow, Greyhound or other Engine, or waiteth for him at any Gap or Pitch where the Deer uſually walk, or taketh his Flight.

49. If any Man who hath long running Hounds, and rideth or goeth in the Highways of the Foreſt, and doth not take up his ſaid Hounds with a faſt Knot, ſo that they follow the Scent of the Deer and kill it, either within the Foreſt or without, what Deer was ſo killed, by whom, and where he dwelleth.

50. If any Man hath taken Deer with Nets, Cords, Ropes, double *Pater-noſter*, or other Engine, contrary to the Statute of 3 *Jac.* 1. *cap.* 13.

51. If any Man chaſe or courſe, or ſet any Net or Engine to kill Deer, though he doth not kill the ſame.

52. If any Man killeth any Fox Hare, Cony or other Beaſt or Fowl of Warren without Authority.

53. If

53. If any Man dwellling about the Borders of the Foreſt, and keeping any ſtrange Grey-hounds, and watcheth the King's Deer out of the Foreſt, and way-layeth it that it cannot return home, and by that Means periſheth, to preſent the Name of ſuch Perſon, and who is Owner of the Greyhound, and the Place where it was done.

54. If any Man hath killed a Deer in the Foreſt, and what Deer, and who it was.

55. If any Man, not worth 10 *l.* a Year in Land of Inheritance, or 30*l.* *a Year of Freehold* Land above all Charges, keepeth any *Greyhound* contrary to the Statute of 13 *R.* 2. *cap.* 13. or who is not poſſeſs'd of Goods or Chattels *worth* 200 *l.* contrary to the State of 1 *Jac.* 27. or is not the Son of a Knight or Baron, or ſome other Perſon of higher Degree, or the Son and Heir apparent of an Eſquire, and hunteth in the Purlieus without any Authority, you are to make Preſentment of his Name and hunting, for otherwiſe he ought not to hunt.

56. If the Foreſters, or any other Officers, have agiſted any other Cattle in the King's Hays, and ſeveral Woods wherein no Perſon hath Right of Common; and if they have mowed any of the King's Lands, and taken Graſs and Hay thereof to their own Uſe, or ſold the ſame to the Hurt of the Deer, and how much it was worth, or what they received for the ſame.

57. If the King's Agiſtors have faithfully agiſted his Woods, and levied and received the Pannage and accompted for it, or if not fully accompted, then how much remains in their Hands.

58. If any Man, who hath Woods adjoining to the Foreſt, and hath put his Hogs therein in Pannage time, and hath made Gaps for his Hogs to paſs out of his Woods into the Foreſt to eat the King's Pannage.

59. If

59. If any Man hath Swine coming into the Foreſt in Pannage-Time, or any other Time, either unringed, rooting or turning up the Soil, to the injury, and making lean of the King's Deer.

60. If any Man hath a Grant from the King, or any Specialty confirmed before the Chief Juſtice in Eyre, for a certain number of Hogs in the Foreſt, if he hath more there than he ought to have, and the Number and Value of them.

61. If any Hogs unring'd, or Goats, have been attached ſince laſt Seſſions in the Foreſt, and the Number and Price of them, they being forfeited by the firſt Attachment, becauſe they are no Beaſts of Common; if any Sheep have been in the Foreſt, or the Covert, and have been three times attached ſince the laſt Seſſions, the Number and Value thereof.

62. If any Stranger hath put his Horſes, Mares, Beaſts or other Cattle in the Foreſt, by reaſon whereof the Paſture of the King's Deer hath been ſurcharged to their Hurt, and the Annoyance of them who have Right of Common therein.

63. If any Man hath put a Stone-horſe to feed in the Foreſt or to be commoned therein, and of the Age of two Years, and not fifteen Hands high by the Standard; or whether there are any Mares, Fillies or Foles not likely to bear Foles of reaſonable Stature, depaſturing therein, contrary to the Statute of 33. *H.* 8. *cap.* 5. and whether the Headboroughs and Tithing men of every of the Townſhips within the Foreſt, have duly execu'ed that Statute on every driſt Day.

64. If any Officer hath taken any Fines for agiſting ſtrange Cattle in the Foreſt, to hinder the Paſture of the King's Wild Beaſts, and of ſuch who have Common in the ſame, and what and how much the Paſture of ſuch Beaſts hath been hindered thereby.

65. If.

65. If any Man hath ſpoiled or deſtroyed any Bruſh or Fern, or any other Covert or Defence, in ſuch Places where the King's Deer haunt, calve or fawn.

66. If any Man, who hath a Grant of Eſtovers for his own Uſe, hath, by colour thereof, given or ſold any to other Perſons, and who hath any, and what Warrant for ſuch Eſtovers, and how much the Foreſt is thereby hurt, and the Names of thoſe who have done the ſame.

67. If any Perſon, dwelling in the Foreſt, hath ſurcharged the ſame, or the Paſture or Meadow thereof, and how it hath been ſurcharged, and to what Hurt and Loſs, *&c.*

68. If any Perſon hath fell'd or cut down any Underwood, Thorns or Rods in the Foreſt, and carried away the ſame unattach'd, and the Names of ſuch Perſons, and the Price of the Underwood, *&c.*

69. If any Perſon hath felled or cut down any of the King's great Oaks in the Foreſt, and carry'd them away, and the Price of the Horſes and Cart, and of the Trees carried away.

70. If any Foreſter, or his Deputy, browſed any Maſt, Boughs, or great Oaks in the Winter-time, more for his own Advantage to ſell, than for the Food of the Deer, his Name, and the Value thereof.

71. If any, who take Wood by the King's Licence, hath exceeded their Authority, and who, how much, and by whoſe Aſſent.

72. If any Man, who hath a Warrant to take ſome Trees, hath taken more than he ought, or if he hath taken them without View of the Verderors or Foreſters.

73. If a Warrant hath been granted to fell Oaks for the King's Uſe, and any Man hath taken them

for

for his own Use, or otherwise given away or sold the same, and the Value thereof, *&c.*

74. If any Commissions have been directed to Wood-sellers to take a certain quantity of Wood or Underwood, and they have well made the Hedges of the Coppice to preserve the King's Covert, and if they have concealed any Profit which the King ought to have; if they have inclosed any Moors, great Plains or Wastes to the Damage of the Commoners, or put in any Cattle to hurt or crop the young Sprouts.

75. What Oaks or other Wood hath been given, sold or taken by the Foresters, who hath consented to the same, and the Quantity and Value thereof.

76. If any Man hath made any Spoil or Waste in the Forest, of Vert, in the King's Woods, or in the Woods of any Person, and what, and how much the said Foresters have given, sold or suffered to be given, or taken to their own Use, of any Wood within their Bailiwick, and if, through Favour of any Person, the said Officers have suffered them, or any of them, to make any Spoil or Waste in their Woods in the Forest, what and how much the Spoil was, and if they have taken any thing, and how much, for the same.

77. How much the Vesture and Covering of any Woods, and the Shade of the same, which were assarted, were worth before they were so assarted, as well of the King's Grounds as of other Men, and who hath received the Profits thereof, and how much the Corn thereof is worth which is now sowed on the Ground so assarted.

78. If any Person other than the Keepers or Officers of the Forest doth walk out of the Highways with Bows and Arrows contrary to the Assise of the same, and who it is.

79. If the respective Foresters have, early every Morning, walked within their Walk and Limits, and diligently

diligently performed their Duty at other times in the Day, by looking after the King's Deer and other Beaſts of Chaſe, and in watching after Offenders who ſhall come into the Foreſt.

80. If any Perſon hath ſtopped or ſtreightned any Church-way, Mill-way or other Ways within the Foreſt and Purlieu, *&c.*

81. If any Perſon hath gathered any Acorns, Crabs or other Maſt, and ſold the ſame to the Hurt of the Deer, and the Commoners there.

82. If any Man hath made any Coppice or Incloſure in the Purlieu, ſtreightening the King's Deer from the Foreſt, to the Hurt of the Owners, or impounded the Beaſts of any Commoners out of the Shire, and not put them in open Pounds, whether in Pannage-time or not.

83. Whether all Rents and Duties, which ought to be paid and done to the King or his Foreſters, have been duly anſwered and done.

84. And, laſtly, if any Perſon hath ſued in another Court, any Plea ariſing within the Juriſdiction of the Foreſt, and to be determined by the Chief Juſtice in Eyre; and if any Perſon hath taken a Fine for killing Hares, or for keeping unprofitable Dogs in the Foreſt contrary to the Aſſiſe of the ſame, or for any other Treſpaſs whatſoever, *&c.*

The

The Oath of the Inhabitants of the Foreſt, being of the Age of twelve Years, uſed antiently in theſe old Rhymes.

You ſhall true Liege-man be,
Unto the King's Majeſtie:
Unto the Beaſts of the Foreſt you ſhall no hurt do,
Nor to any thing that doth belong thereunto:
The Offences of others you ſhall not conceal,
But, to the utmoſt of your Power, you ſhall them reveal
Unto the Officers of the Foreſt,
Or to them who may ſee them redreſt:
All theſe things you ſhall ſee done,
So help you GOD at his Holy Doom.

If a Juſtice-Seat be diſcontinued by the not coming of the Chief Juſtice, it may be reviv'd by the King's Writ; for if the Pleas of the Foreſt are diſcontinued, they may be revived by the King's Writ of Re-ſummons, by which all things will be *in priſtino Statu.*

The Court may ſet a Fine for any Mis-behaviour or abuſive Words; as where a Man was indicted becauſe diſcourſing with others before the Juſtice-Seat about an Indictment, he ſaid, *If you complain of me for cutting Wood within the Foreſt, I will be reveng'd of you and make you ſmoak for it:* He confeſs'd the Indictment, and was fin'd 100*l.* and committed 'till he found Sureties for his good Behaviour. *Jones Rep.* 274.

So Sir *Charles Howard* was indicted, becauſe, at the laſt Swanimote held before the Juſtice-Seat, there being ſome Diſcourſe to the Jurors to preſent, that he felled ſeveral Trees, he ſaid, *The Buſineſs is carried againſt me with a high Hand, but I care not for it, and when they that proſecute me have done, I will begin and have the Matter heard in another Place, and I will*

I will ſtick cloſe to them. He confeſſed the Indictment and was fined 100 *l.* and committed till he paid it. *Jones Rep.* 274.

Claims in Forests.

See { *Appearance*, 5, 6. *Common*, 39. *Dogs*, 18, 19. *Officer*, 6.

1. BY good and lawful Claims Men may juſtify the doing ſeveral things in the Foreſt, which otherwiſe would be unlawful; but then ſuch Claims muſt be allowed in Eyre within the Time of Preſcription.

2. And if the Chief Juſtice in Eyre ſhould refuſe to allow the Liberties claimed, then the Party grieved may have a Writ of Allowance directed to the Chief Juſtice of the Foreſt, commanding him to allow the ſame; and ſo he may if the Chief Juſtice ſhould neglect or delay to allow the Claim, and where any Liberties are allowed at one Juſtice-Seat, the ſame may be pleaded at another time, and the Record of the Allowance of the Claim ſhall be tranſmitted unto the Juſtices, and whatever was not allowed in the laſt Eyre, cannot be claimed or allowed in the next Eyre before 'tis replevied. *Jones Rep.* 285.

3. But if he who claims doth afterwards make Default, the Liberty ſhall be ſeiſed into the King's Hands; for a Default is a good Cauſe of Seiſure. *Itin. Lanc. fo.* 59, 65. *Itin. Pickering*, 16, 23, 116.

4. A Woman who was Tenant for Life of a Park in the Foreſt of *Lancaſter*, called *Knoghſly Park*, claimed the ſame, and alſo free Warren, and afterwards

wards made Default; whereupon one *Latham*, Tenant in Reverſion, was received, and claimed both the Park and Warren; and becauſe he did not produce a good Title, it was adjudged *quòd clauſus præd. proſternetur & remaneat foreſta, ut prius, & quod Warrena præd. capiatur in manus Domini.*

5 But for a *falſe Claim*, there is to be no *Seiſure*, the Puniſhment is only to be fined Thus the Prior of *Lancaſter* claimed the Tithe of all the Veniſon in the Foreſt, *tam in Carne quàm in Corio*, when he could not make out any Title to the Veniſon *in Corio*, and therefore he was *in miſericordia de decima Venationis ſuæ in Corio non percipiendo.*

6. Now, by the *Aſſiſes of the Foreſt*, thoſe who claim ought to make it on the *firſt Day of the Juſtice-Seat*, otherwiſe their Claim ſhall not be received without paying a Fine; for if once 'tis put in, and afterwards it ſhould appear to be faulty, 'tis not to be amended without a Fine. *Aſſiſ. Pick.* 15. Or if put in and not proſecuted to get an Allowance, Judgment ſhall be entered againſt them for Default of Proſecution. *Jones Rep.* 297.

7. As to Trials of Claims, 'tis to be obſerved, if a Man claim to be a Foreſter in Fee, either by *Preſcription*, *Grant* or *Tenure*, and prayeth, that it may be enquired by the Miniſters of the Foreſt, in this Caſe the Verderors, Regarders and Agiſtors ſhall try the Title; but if a Man claim by *Inheritance*, or otherwiſe, any Profit *Apprender*, as Common of Eſtovers, or Common of Paſture, in this Caſe the Tryal ſhall be by the Foreſters, Verderors and Regarders, and not by Agiſtors.

8. If the Claim require a Tryal by the Country, then the Concluſion of the Plea is *& hoc peratus eſt verificare pront Curia, &c. inde inquiratur inde veritas per miniſtros ejuſdem foreſtæ*; and in ſuch Caſe the Verperors, Regarders and Agiſtors, ſhall only try it; but there are many Precedents where the Entry

Entry hath been as before mentioned, that theſe Words immediately have followed; *viz. Et quia videtur Curiæ hic quod expedit. & neceſſe eſt ad inquirend. tam per miniſtros foreſtæ prædictæ quàm per alios probos & legales homines.* And there are few or no Precedents where the Countrey alone, without any Officers of the Foreſt have tried Claims. *Itin. Lanc. fo.* 2, 3, 4.

9. Then as to the matter of pleading where there is no Tryal, 'tis to be noted, that there may be a Demurrer in Law upon a Claim before the Juſtices of the Foreſt. *Itin. Picker. fo.* 21.

10. And this was affirmed by the Chief Juſtice *Richardſon, in Itin. Windſor.* 8 *Car. Jones* 272. *viz.* That the Court could not adjudge a Claim without ſome Plea or *Demurrer* on the King's ſide: But Mr. Attorney *Noy* ſaid, There never was any Demurrer in Eyre, neither is the Attorney-General to attend there; but when the Claim is made, it is read to the Court, and the Allowance or Diſallowance is *Quibus lectis, &c.* And when there is an Iſſue, the Entry is, *Qui ſequitur pro Domino Rege petit quòd inquiratur, &c.* And there was a Perſon who, in the antient Eyres, attended in the nature of the King's ſpecial Attorney, but not his Attorney-General, who could not confeſs any Plea, but only ſaid, *Viſis præmiſſis non dedicit.*

11. If a Man claim any Liberty or Franchiſe by *Grant*, and if the King's Counſel demand *Oyer* of it, he muſt produce it, otherwiſe Judgment ſhall be entered againſt him, *quia non oſtendit chartam*; and if, in the *King's Bench* or *Exchequer*, the King's Attorney deſire *Oyer* of it at any time in that Term in which it was pleaded, if the Party do not produce it, the King ſhall have Judgment. *Jones Rep.* 274.

12. Tenants in Antient Demesne may not join in one Claim for a Common, because the King cannot claim for them; but Copyholders, who are Tenants to one Lord, may join in a Claim, or the Lord may prescribe for himself and them, because the Freehold of their Land is in him by Law; but he cannot prescribe for any of his Freeholders, but every one of them must put in several Claims. *Jones Rep.* 276.

13. A Claim, *quòd nullus forestarius, vicecomes, &c. intromittat* is void, if he doth not make Title to himself to do Justice; for no Place can be exempted from the King's Law, and therefore a Grant from the King to exclude his Officers from such a Place is void, unless he appoint some Body to do Justice there.

Common in Forests.

See { *Charge, in Chief Justice*, 61. *Nusance*, 65. *Prescription*, 19. *Woods*, 27. *Appendix*, Stat. 33. Ed. 1. *Appendix*, Ordinatio forestæ, 6.

1. IT appeareth, *in Chartâ de forestâ, Artic.* 1. That where the King hath afforested his *own Woods or Lands*, the same shall remain a Forest, but *salvâ communâ de herbagio, & aliis in eadem forestâ; illis qui prius eam habere consueverunt*: So that by the Afforestation, he doth not abridge or prejudice any Man to have Common who had a Right before; but the same is reserved as it was at Common Law; *à fortiori*, where he afforests the *Woods or Lands of another Man*, he doth not abridge their Right

Right to have Common in any waste Soil or other Place in the Forest, where they used to have Common before, and with such Cattle which are commonable there.

2. And by the Statute called *Ordinatio Foreste*, made *Anno* 33. *Ed.* 1. *cap.* 5. long after he had confirmed the *Charter* of the Forest, 'tis explain'd who shall have *Common*, and who not, and for what Cause, in the Forest, in these Words:

'3. *ff.* The Intent and Will of the King is, 'That from henceforth, where *Purlieu* is (that is 'to say) where Woods and Lands are disafforested, they may claim to be quit of the Charge 'and Burthen of the Forest: And whereas the 'King's Wild Beasts of the Forest cannot haunt 'and repair unto those Woods and Lands disafforested, as they might have done so long as the 'same were within the Bounds of the Forest; such 'Persons, who were put out of the Forest by *Disafforestation*, shall not have *Common* or other Easement within the Woods or Lands which remain 'in the Bounds of the Forest.

'4. But if any of them who have been disafforested by the Purlieu, would rather be within 'the Forest, as they were before, they shall be 'received and remain in their antient State, and 'shall have Common and other Easement as well 'as they had before.

5. So that the King, by the Afforestation of the Woods or Lands of *other Men*, doth not restrain them from the Right of Common within the Forest, but leaves that still as it was at Common Law.

6. And it seems by the whole scope of this Statute, that the Intent of the King is, That every Man, who is a Tenant of Land within the Forest, shall have and enjoy Common in respect of the Charge and Burthen, which, by the Laws of the

Foreſt, he is ſubject unto; for the King's Wild Beaſts have their continual Haunt, quietly to feed in every part of their Woods and Lands in the Foreſt, which is a Burthen and Charge to the Tenants; therefore, if the King makes an Afforeſtation of any Place, he doth not reſtrain them from Right of Common, either in his waſte Soil, or in that of any other Perſon; but by this Statute doth ſeem to inlarge their Common in his waſte Soil only, or at leaſt doth leave every Man's Right of Common in all Foreſts as it was before at Common Law; it may therefore be neceſſary to mention what is Common.

What is Common, and why it is ſo called.

7. Common is properly the Right or Intereſt which a Man hath to feed or paſture his Beaſts or Cattle in another Man's Soil or Land; and 'tis called Common *a Communitate, viz.* From the Community or Number of Men who have a Right to it, or from the Number of Beaſts who participate of the Herbage; for where Men have Common of Paſture for their Cattle or Beaſts, many Mens Cattle do uſually depaſture there; and therefore *Budæus* calls ſuch Common of Paſture, *Compaſcuum, viz.* A Place wherein ſeveral Mens Cattle feed in Community.

How

How many Sorts of Common there are, and in what Manner used.

At Common Law there are Four Sorts of Common.

Common { *Appendant.* / *Appurtenant.* / *In Gross.* / *By Vicinage.*

8. *Common Appendant* is where a Man hath arable Land, unto which he hath *Common Appendant*; for it cannot be appendant unto any other than arable Land. 26. *H.* 8. *fo.* 4. *Plac'* 15. It cannot be appendant to a House, neither can he who hath such Common enjoy it with all manner of Beasts, but only with such which are Commonable; *viz.* with such as do feed on the Land unto which the Common is appendant, for Geese, Goats, Sheep and Swine must not common there.

9. *Common Appurtenant* is, where a Man is seised of a *Messuage* and certain Land unto which the Common appertaineth. *Hill* 10. *H.* 7. *fo.* 12. *Plac'* 1.

10. At Common Law *Common Appurtenant* was to have Common for all manner of Beasts and Cattle whatsoever, as well for such as were Commonable, as for those which were not; *viz.* for Geese, Goats, Sheep and Hogs; but for uncommonable Cattle, a Man cannot have *Common Appurtenant* in a Forest, without a special Grant from the King or Owner thereof. *Pas.* 9. *Ed.* 4. *fo.* 3. *Plac'* 13. *Dyer, fo.* 70. *Plac'* 39. But he may have *Common Appurtenant* in a Forest for all Beasts which are commonable. 25. *Assis. Plac'* 8. 37. *H.* 6 *fo.* 34. *Plac'* 20.

11. *Common in Gross* is, where a Man, by Deed, granteth unto another to have Common in a certain Place, with certain Beasts *only*; and such Common a Man may have in a Forest, either by the King's Grant, or by the Owner of the Forest, 22 *Assisa Plac'* 16. in the Case of the Prior of *Napleton.* 36 *Assisa, Plac'* 3.

12. *Common by Vicinage* is, where the Tenants of two Lords, who are seised of two Towns lying near to one another, and every one of them, Time out of Mind, had Common in each Town for all manner of commonable Beasts; and such Common may likewise be in a Forest by *Prescription.* 13. *H.* 7. *fo.* 13. *Plac'* 3. *Dyer, fo.* 47. *Plac'* 13.

13. In a *Chase* the Owner of the Soil may prescribe to have Common for Sheep, and Warren for Conies, either by Grant or Prescription; but he cannot surcharge with more than have been used Time out of Mind; nor make new Borows in other Places, unless he hath Warren by Grant, and then he may use it according to his Grant. 12 *Co. fo.* 22.

14. But no Man can have any Profit or Pleasure in a Forest which tends to the Destruction thereof, which is the true Reason why no Person can prescribe to have Common in a Forest for Sheep, Goats, Geese or Swine, for 'tis *ad magnum nocumentum feralium foresti &c.*

15. Sir *Edmund Sawyer* being seised in Fee of the Manor of *West Waltham*, alias *Heywood*, claimed Common of Pasture belonging to the said Manor in all open Places in the Forest of *Windsor*, within the Bailiwick of *Pynes*, and that he might *Stuff herd* there, and derived a Title by a Grant of *R.* 1. to the Abbot of *Waltham-Holy Cross* in *Essex*, and shewed the Dissolution of the Abbey, and the Possessions thereof came to the Crown; and a Grant of the said Manor to *J. Norris*, Esq; with these Words,

Tot, tanta, talia, libertates, privilegia & franches, &c. quot, &c. aliquis Abbas, &c. And so, by several Mesne Conveyances, brought down a Title to himself, and pleaded the Statute for reviving the Liberties in the Crown. See *Postea Dogs*, 39.

16. It was adjudged, *in Itinere Windsor, Jones Rep.* 186. That admitting a good Title in the Abbot; yet, by the Dissolution, there was an *Unity of Possession* in the Crown, which destroyeth the Common, and it shall not be revived by those general Words, *tot, tanta, talia, &c.* because a *Common* is neither a *Liberty*, *Privilege* or *Franchise*; and so it was adjudged for Land in *Braydon-Forest*, which was formerly the Possessions of the Abbot of *Malmsbury*. See *postea, par.* 25. of this Chapter.

17. But if the King had granted *tot, tanta, talia privilegia, &c. & communias, &c. quot aliquis Abbas Monasterii, &c.* in such Case, if there was any *Common*, *Appendant* or *Appurtenant* to that Manor or Lands in the Abbot's Hands, it shall be revived.

18. But if an Abbot had *Common in Gross*, and the King grants Parcel of his Possessions, with the Words *tot, tanta, talia, &c.* this shall not revive the Common in the Hands of the Grantee; because then every Man, who hath any part of the Abbot's Possessions, will have as much Common as the Abbot himself had whilst they were all in his Hands, and so the Forest would be infinitely surcharged.

19. But in case of *Common Appendant* or *Appurtenant*, there is no such Prejudice; because there each Man can keep a Number of Cattle only proportionable to his Land, and no more; for he cannot common with more than the Land, to which his Common belongeth, will keep in Winter.

20. He likewise prescribed for himself and all his Tenants, to have Common, *&c.* and that the Lands of his Copyhold-Tenants not being in the Crown, their Common was not gone.

21. But it was adjudged, that if ſo, then the Preſcription for the Copyholders ought to be laid in ſome of the Abbots in whom the Poſſeſſions were ſevered, and then have ſhewed the coming of the Manor to the Crown, and from that have claimed ſpecially by making a Title to themſelves to their Copyholds by the Court Rolls of the Manor, as in *Swayne's Caſe*, 8 *Rep.* 64. But though the Claim was not good, yet the Court gave Direction to the Officers of the Foreſt to find the uſage of the Tenants, which was accordingly done, and ſo the Common was allowed to them, but not to Sir *Edmund Sawyer*.

22. By the Statute of 17 *Car.* 1. *cap.* 16. The Tenants, Owners and Occupiers of Lands and Tenements which ſhall be excluded and left out of the Meets and Boundaries of the Foreſt (to be returned and certified by virtue of the Commiſſions which are to be granted by that Statute) ſhall uſe and enjoy their Commons, and other Profits and Eaſements within the Foreſt, as antiently or accuſtomably they have uſed and enjoyed the ſame, any thing in that Statute contained, or any Act or Ordinance made *Anno* 33 *Ed.* 1. or any Cuſtom or Law of the Foreſt, or any other Matter or Thing to the contrary notwithſtanding.

23. At a Juſtice-Seat held for the Foreſt of *Waltham*, *Anno* 10 *Car.* 1. at *Stratford-Langton* in *Eſſex*, before the Earl of *Holland*, Chief Juſtice in Eyre, and Juſtice *Jones*, and Baron *Trevor*, by ſeveral Letters directed to them under the King's Privy-Signet, to be Aſſiſtant to the ſaid Chief Juſtice in Matters of Law, it was reſolved;

24. That if an Abbot, Lord of a Manor, hath Common for himſelf and his Tenants Copyholders of Inheritance in the King's Waſte in the Foreſt, and in the Waſte of other Freeholders there, and afterwards the Manor comes to the King by the Diſſolution

Diſſolution of the Abbey, and then the King grants the Manor to another; That, in this Caſe, the Common is extinct in the King's Waſte, as to the Lord of the Manor; but not as to the Copyholders, neither is it extinct as to the Lands of the Freeholders; but if the King had granted the Common as the Abbot had it before, there it ſhall enure as a new Grant of the Common in the King's Waſte.

25. And at the ſame time it was held, That if a Liberty be reaſſum'd by Act of Parliament, which was veſted in a Corporation before the Act of Reſumption, and afterwards the Lands come to the King, and he grants the ſame, together with theſe Words, *Tot, talia privilegia & libertates, &c.* generally as the Corporation had before the Grant, the Liberties ſo reaſſumed ſhall not paſs without ſpecial Words to grant them *de novo.* See above, *par.* 16.

26. And that if an Abbot was ſeiſed of a Manor, which had Waifs and Strays belonging to it, and likewiſe *catalla felonum & utlagat.* and the Manor afterwards comes to the King, and he grants the ſame over to another generally, with theſe Words, *Tot, talia privilegia, &c.* in ſuch Caſe the Grantee ſhall have the Waifs and Strays as belonging to the Manor; but not *bona felonum & utlagat.* without ſpecial Words in the Grant. *Jones, Rep.* 349.

Who ought to have Common in the Foreſt.

27. Every Inhabitant in a Foreſt, who hath Common Appurtenant, that is, who can preſcribe to the ſame, in the King's waſte Soil, or in the waſte Soil of any other, as belonging to his Dwelling-houſe only, or to his Houſe and Lands, may have Common in a Foreſt; and ſuch Preſcription is good at Common Law, and likewiſe by the Foreſt Law, for there is no Law or Ordinance of the

the Forest against it; and therefore he who can so prescribe, may have Common there.

28. Likewise a Man may prescribe to have Common, by reason he is an Inhabitant in an antient Town, in which there is a Custom, Time out of Mind, That all the Inhabitants have Common within a certain Place, for all manner of commonable Beasts, Levant and Couchant within the same Town; and this is a good Prescription, both at Common Law, and by the Law of the Forest. 20 *Ed.* 4. *fo.* 3. *Plac'* 15. 15 *Ed.* 4. *fo.* 32. *Plac'* 16. *fo.* 29. *Plac'* 7.

29. But a Man cannot prescribe to have Common there, if he dwelleth in a new House, that is, an House newly built; for all such new built Houses are Purprestures by the Laws of the Forest; and therefore those who dwell in them cannot prescribe, by reason of such Inhabitancy only.

30. *Anno* 10 *Ed.* 1. the Burgesses of *Lancaster* did claim to have Common of Pasture within the Forest of *Lancaster* for such Beasts which are commonable in a Forest; and this was held a good Claim, as appears *in Assisa forestæ Lancastr. fo.* 13. & 30.

31. And in that Case, it was held for Law, That Sheep, Swine and Goats, are not commonable, *Quia præbent exilium ferarum in forestâ.*

32. The like Claim was there made by the Burgesses of *Preston*; *viz.* To have Common of Pasture within the same Forest, by reason of their Inhabitancy, and it was allowed to be good; but it was adjudged in *the Assises of Pickering*, *fo.* 67. That a Man cannot have Common for Goats in a Forest without special Warrant, because they are neither *Bestiæ venationis neque forestæ.*

33. But many Things may be appurtenant, and not to a Messuage; for to be quit of Pannage, *tempore pannagii*, was adjudged good in the Claim of one

one *Ladmanſch*, as appertaining to a Man's Free-hold.

34. So an Office of a Woodward, and likewiſe the Bark of Timber-Trees felled, was adjudged to appertain to a Manor. *Itin. Pickering, fo.* 16.

35. And in the ſame Folio, it was adjudged, That to be diſcharged of Pannage of Hogs in the Foreſt, may be appurtenant unto Lands.

36. To preſcribe, that he and his Anceſtors, *a tempore quo, &c.* had Common of Paſture, *&c.* is good, without ſaying, That he and his Anceſtors, and *all thoſe whoſe Eſtate* he hath in certain Lands, *&c. a tempore quo, &c.*

37. But no Man may have Common in a Foreſt for the Beaſts of Strangers; but he muſt take the Common with his own Beaſts. *Aſſiſa Pickering, fo,* 10. in the Caſe of one *Gower*.

38. If the Foreſters, or other Officers, diſturb the Cattle of any Perſon or Townſhip, in taking Common in the Foreſt, or extort any Money for the ſame, 'tis finable at the Juſtice-Seat. *Aſſiſa Pickering, fo.* 10.

39. If the Chief of the Foreſt refuſe to allow the Claim of thoſe who preſcribe to have a Common in a Foreſt, or any other Liberty, the Party may have a Writ of Allowance; and if he delay to allow ſuch Claim, then he may have the King's Writ of Allowance directed to the Chief Juſtice of the Foreſt, commanding him to allow the ſame; the Tenor of which Writ may be ſeen, *Anno* 10. *Ed.* 3. *Itin. Lancaſtr. fo.* 9, *&* 69.

40. If a Claim is allowed at one Juſtice-Seat, the ſame may be pleaded at another Time; and the Record of the Allowance ſhall be ſent down by the Writ unto the Juſtices.

41. And as a Man may claim *Common Appurtenant* in a Foreſt by Preſcription, for all manner of Beaſts which are commonable, ſo likewiſe he may preſcribe

ſcribe to have *Common of Vicinage* in a Foreſt, or to have *Common Appendant*.

42. As to Preſcription for a Woodward, this Caſe happened *Anno* 21. *Ed.* 3. The Inhabitants of a Town, *&c.* made their Claim before the Chief Juſtice in Eyre of the Foreſt of *Pickering*, to chooſe their Woodward of a certain Wood within that Foreſt, and alſo to have the Windfall-Wood there, and reaſonable Common of Eſtovers there, as appendant to the Inhabitants in that Town, and their Claim was allowed, *quod nota. Mich.* 21. *Ed.* 3. *fo.* 49, 70.

43. So that it ſeemeth, a Man may preſcribe to have *Common Appendant* unto certain Land belonging unto the Inhabitants of a Town, for Beaſts commonable in a Foreſt which are Levant and Couchant therein.

44. But this is contrary to *Gateward's* Caſe, 6 *Rep.* That Inhabitants, *&c.* cannot make a Claim for *Profit apprender*: And ſo it hath been ſince held in the Caſe of the Inhabitants of *Huley*, who claim'd Common of Paſture in the Foreſt of *Windſor*; *viz.* That *Inhabitants* could not claim a *Profit apprender*, but an Eaſement they might. *Jones*, *Rep.* 297.

45. *In Itinere Eborac. Anno* 23. *H.* 3. There was a Claim for *Common in Groſs*, in a Foreſt, the Caſe was thus; One *W.* who was Lord of a Foreſt, granted to an Abbot, Common of Paſture for forty Mares and eight Stallions, within the Foreſt of *L.* and becauſe the Words of the Grant, *Quòd Abbas præd. habeat ubique paſturam in foreſtâ*, therefore it was adjudged, That the Grantor could not incloſe any part thereof. *Fitz. Tit. Common.* 25.

46. By which it appears, That a Man may have *Common in Groſs* in a Foreſt; and he who hath ſuch a Common, may uſe and enjoy it there according to the Purport of his Grant; for this ſort of

of Common is by *Deed* only, and not by *Preſcription*; but all the other three ſorts of Common are by *Preſcription only*, without *Deed*.

47. But in all theſe Caſes, or any other, where Liberty is granted of any thing in a Foreſt, if the Grantee doth not uſe the ſame continually, and it appeareth ſo upon Enquiry, then the Liberty is to be ſeiſed, for *Non-uſer* is a good Cauſe of Seiſure: This appears in the Caſe of the Abbot of *Rievall*, *Itin. Pickering*, *fo.* 15, 17, 18.

48. And no other Title can a Man have to a Common in a Foreſt, but either by *Preſcription* or *Grant*, as aforeſaid.

What Beaſts are commonable in a Foreſt, and what not.

49. All manner of Beaſts are commonable in a Foreſt, except *Goats*, *Geeſe*, *Sheep* and *Hogs*; and a Man cannot preſcribe to have Common for them, becauſe ſuch a Preſcription can have no lawful Beginning; for 'tis *ad magnum Nocumentum ferarum foreſtæ*, 25 *Aſſiſ. Placito* 8. 37. *Ed.* 6. 34 *Placito* 26. *Dyer*, *fo.* 70. *Placito* 39. But my Lord *Coke* tells us, A Man may preſcribe to have Common for *Sheep* there, *Bulſt.* 213. 4 *Inſt.* 298.

50. And probably he might ground his Opinion upon the Caſe, 8. *Ed.* 3. *fo.* 31. where the Prioreſs of *Witkham* preſcribed to have Common in the Foreſt of *Pickering*, *pro omnibus Beſtiis ſuis exceptis Capreolis*; and this was before the Juſtice in Eyre, and the Claim was allowed.

51. But Common of Paſture for *Sheep* in a Foreſt, is good in two Caſes; *viz.* Where an Officer of the Foreſt, who hath Land belonging to his Office, claims Common for *Sheep*, as belonging to his Land: And this was allowed in one *Blanchard*'s Caſe, in the Reign of *R.* 2. who, by vertue of his Office, and the Land belonging to it, claim-

ed

ed Common for *Sheep* in the Forest, by *Prescription*; and it was adjudged for him in Eyre, and also in *Chancery*, upon a *Monstrans de droit*, and afterwards in Parliament: And such another Case there was for *Clarendon Forest* in *Wiltshire*.

52. So where a Man prescribed to have Pasture for Sheep in his own open waste Grounds, but not in the Coverts on his own Land, nor on other Mens Lands, though it be in the open Places thereof.

53. And the Reason why 'tis good in the Case of an Officer of the Forest, is, because there is a Condition in Law annexed to his Estate, by reason of the Trust reposed in him; and if he put more in than he ought, 'tis a Surcharge, and a Forfeiture of his Office. *Jones*, *Rep.* 292.

Of Surcharges of the Forest.

54. If one who hath Common Appendant or Appurtenant in a Forest for a certain Number of Beasts, doth common there with more than his Number, then he surcharges the Forest, and is a Trespasser, punishable by the Law of the Forest, as well as by the Common Law; for by such Surcharge, the Wild Beasts are driven to find Pasture in other Places. *Assiz.* 22. *p.* 65.

55. The Case is the same where a Man hath *Common in Gross* in a Forest, and he surcharges it.

56. And in this Matter the Forest-Law differs from the Common Law; for by that Law, if a Man hath *Common Appurtenant* or *Common in Gross*, in a certain place *sans Number*, he cannot surcharge such Common; and in such Case the Writ of Admeasurement will not lie: But, by the Forest-Law, if he hath Common *sans Number*, and surcharges it with so many Cattle, that the Wild Beasts of the Forest cannot have sufficient Pasture there,

there, he shall be accounted a Surcharger of the King's Forest, and shall be punished accordingly.

57. So that if a Man hath a Grant to common there *sans Number*, those Words must be understood, that he may have Common there with any Number of Cattle, so that the Wild Beasts may have sufficient Pasture left.

58. *Trin.* 12. *H.* 8. *fo.* 2. *Brook*, one of the Judges of the *Common Pleas*, held, That where a Grant is made of a Common *sans Number*, yet the Grantee may not put in so many Cattle, but that the Grantor may have sufficient Pasture for his own Beasts in the same Lands: *Pari Ratione*, he who hath *Common in Gross sans Number* in a Forest, must not put in so many Cattle, but that the Wild Beasts of the Forest may still have sufficient Herbage left to depasture on, otherwise he shall be accounted a Surcharger. *Dyer, fo.* 80. *p.* 59.

59. The same Law where a Man claims *Common Appurtenant* in a Forest, or any other sort of Common there.

The Means to know who is a Surcharger is thus;

60. *ff.* First, to make a true Estimate of the Number of Acres which the Place where the Common is surcharged doth contain; then to set down how many Parishes, Villages or Hamlets, have Right of Common there; then to number the Messuages and Cottages in those Towns and Parishes, *&c.* and what Land belongeth to each of them: So that by knowing the Certainty of the Number of Beasts which are usually fed on the Common so surcharged, a perfect Estimate may be made rateably, what Number of Beasts may be kept by every Man who hath Right of Common there, according to the Quantity of Land he enjoyeth, leaving sufficient Food and Pasture for the Wild Beasts; so that he who is found to have more

Beasts

Beasts there than this Rate doth allow him to keep, is a Surcharger.

61. The same Course is observed at Common Law to avoid surcharging a Common, by the Writ *de Admensuratione pasturæ, Lib. Intr. fo.* 13. which Writ is directed to the Sheriff of the County where the Commoners claim their Right of Common, that each of them may be admeasured; so that they may common with no more Beasts than they ought.

62. In like manner, upon Complaint of the Officers of the Forest, that the same is so much surcharged that there is not sufficient Pasture left for the Deer; in such Case a Commission may be directed out of the *Chancery* to the King's Lieutenant of the Forest, and the Verderors and Chief Foresters there, commanding them to inquire, by the Oaths of good and lawful Men, what Number of Acres the Place doth contain, wherein the Surcharge is supposed to be made; and what number of Beasts are commoning therein, and whose they are; and what Parishes, Villages and Hamlets ought, of Right, to have any Common there; and how many Messuages and Cottages there are in each of them; and how many Acres of Land do belong to every House: And then, by computing how many Beasts may common in the same, leaving sufficient Pasture for the Deer, they shall rate and apportion every Man what Number of Beasts, and of what sort, every Man may keep; and he who keeps more is a Surcharger of the Forest.

How a Surcharger is to be punished by the Laws of the Forest.

63. At Common-Law, if a Man surchargeth the Common, and the Writ *de Admensuratione pasturæ* is brought, every Commoner shall be admeasured thereby,

hereby, and rated to a certain Number of Beasts, and what Beasts; and if any of the Commoners do afterwards surcharge the Common, then any other Commoner may bring a Writ *de secundâ superoneratione pasturæ*, directed likewise to the Sheriff, reciting therein the first Admeasurement, and commanding him to go to the Common where the Surcharge is suppos'd to be, to inquire into the same by the Oath of good and lawful Men; and if, upon such inquiry, the Sheriff shall find a second Surcharge, then the Offender shall pay Damages to the Party grieved, and the supernumerary Beasts shall be forfeited to the King by the Statute *W.* 2. *cap.* 8. *F. N. B. fo.* 126.

64. This is the Punishment at Common-Law for Surcharge; but 'tis a *Quære* whether such supernumerary Cattle, commoning in a Forest, are *forfeited* to the King, by the Forest-Law; for, in all the *Iters of Pickering and Lancaster*, I find no such *Forfeiture*.

65. But, in the *Assises of Pickering Anno* 10. *Ed.* 3. *sect.* 12. it appears, That a Surcharger of a Forest shall be indicted and fined for the same to the King, and imprisoned till paid.

66. Yet it seems reasonable, That, after such a Commission, as aforesaid, is issued out of *Chancery*, in nature of a Writ *de admensuratione* at Common-Law, and every Man is rated according to his Portion, and that afterwards a Man surcharges the Common; that in such case the supernumerary Cattle should be *forfeited*; but 'tis plain, that he ought to be indicted as aforesaid.

67 'Tis true, in the Case of *Stow-Park*, *Dyer*, *fo.* 80. *Plac'* 59. the Grantee of that Park had likewise the Agistment thereof, and he put in more Beasts than he ought to agist, by reason whereof he surcharged the Park, so that the Deer had not

ſufficient Paſture; it was not fully agreed what remedy the Grantor ſhould have for this Offence.

68. But it ſeems very reaſonable, that the Common ſhould be ſeiſed into the King's Hands for a Surcharge; becauſe, by the Foreſt-Law, whoever hath, or claimeth to have, any Liberty or Profit in a Foreſt, either by Grant or Preſcription, and abuſeth the ſame by uſing it in another Manner than what is warranted by his Title, as in the Caſe of the Prior of *Lancaſter*, who took *viridem Boſcum pro mortuo Boſco*, this is good Cauſe of Seiſure, and the ſame muſt be ſeiſed into the King's Hands, and, after a Fine paid, muſt be reſtored to him again.

69. Now it cannot be denyed but that a Surcharge is *Abuſer*, and for that Reaſon it ought to be ſeiſed; *tamen Quære.*

70. The Dean and Chapter of *Salisbury*, being Proprietors of the Rectory of *Winckfield*, claimed Common of Paſture for their Cattle, *Levant* and *Couchant* on the Rectory, in the open Places of the Foreſt of *Windſor*; and this was by Preſcription.

71. Now it ought to be inquired, whether thoſe who claim a Right of Common in a Foreſt, do uſe *Staff-herding* or not; that is, the Miniſters of the Foreſt are to inquire, whether they uſe to have one follow their Cattle; for that is not allowable of Common Right, becauſe, by that means, the Deer are frighted, which would otherwiſe feed with the Cattle; beſides he who looks after the Cattle will drive them into the beſt Paſture, and ſo the Deer will have only what is left: Therefore if any Man hath Right of Common, and under Colour thereof, uſeth *Staff-herding*, his Common ought to be ſeiſed till he hath paid a Fine for the Abuſe. *Jones* 282.

72. *George Taterſall* claimed Common of Paſture in the Foreſt of *Windſor, tanquam ad manerium ſuum de Finchamſted ſpectan.* and this was by Preſcription; it appeared that the Manor had been in the Crown, and ſo, in ſtrictneſs of Law, the Common was gone by Unity of Poſſeſſion; but becauſe it came from the Crown in the Reign of King *John*, ſuch a long Poſſeſſion was not queſtioned. *Jones* 285.

73. The Claim of commoning differs from all other Claims in a Foreſt, ſo 'tis good without an Allowance in Eyre, which no other Liberty is, that goes to Deſtruction of the Vert or the Game; and the Reaſon is, becauſe a Preſcription to have Common is an equitable Preſcription, and upon the matter of Common Right; for ſince the Deer have fed on their Grounds, 'tis reaſonable they ſhould have Common. *Jones Rep.* 291.

Deer, ſee Doe.
Deputy, ſee Swanimote, 4, 5, 6, 7.

Diſtreſs.

See *Appendix*, Aſſiſa foreſtæ, 5, 15.

Who may be compelled to appear by Diſtreſs, and how to be taken.

1. IN *Chartâ foreſtæ, cap.* 8. there are theſe Words; viz. *Nulli alii per diſtrictionem*, &c. By which muſt be underſtood, That if any of the Officers of the Foreſt, or others, who ought to appear at the Court of Swanimote, make Default, the ſame ſhall be inrolled in the Rolls of the Court; and thereupon the Verderors and Steward thereof, or his Clerk or Deputy, by the Oath of other Officers

of that Court, ſhall amerce the Defaulters, which Amerciament ſhall be forthwith aſſeſs'd, and eſtreated to the Chief Warden of the Foreſt, or to his Deputy, or to the Beadle, to be levied by Diſtreſs; which Beadle is an Officer of the Foreſt to go throughout the ſame like a Sheriff's ſpecial Bailiff.

2. But in this Caſe the Verderors may chooſe whether they will eſtreat the Amerciament preſently by Diſtreſs, or otherwiſe certify the Defaults in the Rolls of the Court to the Juſtices of the Foreſt; who thereupon will iſſue forth Writs directed to the Chief Warden of the Foreſt, or to the Sheriff of the County where the Defaulters live, to levy the ſame by Diſtreſs; or the Verderors may certify the Defaults into the Court of *Exchequer*, out of which Court Proceſs will iſſue to the Sheriff to levy the ſame; and there are many good Precedents to warrant each of theſe proceedings.

3. The Default for not appearing at a Court of Swanimote being recorded, the Defaulters may be diſtrained to appear at the next Court; like as upon an Original where a Man is ſummoned and doth not appear, he ſhall be forthwith diſtrained; and if he ſhall make Default again, he ſhall be diſtrained in double the Sum, that is to ſay, one Diſtreſs for the Amerciament, by reaſon of his not appearing, *pro ſectâ ſuâ non factâ*, and another for a new Appearance at the next Swanimote, be it Suit-Service or Suit-real, or elſe by direct Proteſs of Common-Right, like a Diſtreſs againſt a Juror, to diſtrain him to come to the next Swanimote.

4. If an Officer of the Foreſt doth not appear, as aforeſaid, at a Court of Swanimote, then the Chief Warden of the Foreſt, or his Lieutenant, or the Beadle of the Foreſt, may diſtrain him for that Amerciament in three Shillings, more or leſs, on any Land he hath, by reaſon of his Office, and, in like manner, he may diſtrain on any other Land

Land he hath in the Foreſt, although he hath it not in Right of his Office; but he cannot take a Diſtreſs in any Lands out of the Foreſt; he may diſtrain the Goods of that Officer who makes Default, though they are in the Lands of any other Man in the Foreſt.

5. The ſame Law of any other Man who ought to appear at the Swanimote, beſides an Officer of a Foreſt, as a *Bailiff*, *Conſtable*, *Tythingman*, *Freeholder* or *Juror*, who is ſummoned to appear at that Court, either to be of the Jury, or to do any Service there.

6. If no Diſtreſs can be found in the Foreſt, it ought to be certified by the proper Officer to the Chief Juſtice in Eyre; and upon a *Teſtatum* there that ſuch a Perſon who ought to appear, did make Default, and was amerced for the ſame, and that he had not any Goods or Lands in the Foreſt that he might be diſtrained, but that he hath Lands out of the Foreſt, and in ſuch a County; then there ſhall iſſue a Precept to the Sheriff where the Lands are, *ad diſtringendum terras & tenementa cujuſdam, A. B. in Comitatu illo, &c.* by vertue whereof the Sheriff may diſtrain there for the Amerciament.

7. Now tho' the Juſtices of the Foreſt are not Juſtices in the County, yet, upon ſuch a *Teſtatum*, they may cauſe a Precept to be directed to the Sheriff of a Foreign County out of the Foreſt, to levy the Amerciament; and this is affirmed by the Opinion of Mr. *Hesket*, *fo.* 37.

8. And if the Beadle or other Officer, coming to diſtrain, is prevented by the Owner of the Cattle, by conveying them out of the Foreſt, or otherwiſe, in ſuch Caſe, though the Officer freſhly purſue them, yet he cannot lawfully take them, being out of the Bounds of the Foreſt; but if ſuch Cattle had once been diſtrained for the Amerciament, and then the Owner had, by Force, taken them

away, and driven them out of the Foreſt, in ſuch Caſe he may retake them in any place out of the Foreſt.

9. The ſame Law if a Stranger take the Cattle from the Officer after the Diſtreſs made of them, and delivers them to the Owner, who drives them out of the Foreſt, the Officer may lawfully retake them any where; but if the Cattle ſo diſtrained, return to the Land of the Owner, by the Neglect of the Officer who ought to have impounded them, then, if the Land is out of the Foreſt, he cannot retake them there; for now the firſt Diſtreſs is determined by the return of the Cattle to the Owner, without his Account or Privity; for 'tis not like a *Reſcous*, where the Owner comes to the Poſſeſſion by his own Wrong.

10. But if the Officer hath diſtrained, and afterwards delivers the Diſtreſs to a Stranger to keep for his own Uſe, who drives them to his own Land within the Foreſt, and then the Owner takes them from thence and drives them out of the Foreſt; in this Caſe the *Beadle* or other Officer cannot retake them being out of the Foreſt.

11. But 'tis otherwiſe if the Officer had taken the Diſtreſs, and delivered it to a Stranger to keep as a Diſtreſs; in this Caſe, if the Owner take them and drive them out of the Foreſt, the Officer may purſue them and take them again any where out of the Foreſt, and in any foreign County; ſo that there is a Difference where ſuch Cattle are delivered to be kept as a Diſtreſs, and where to be kept for his own Uſe.

12. If he who ought to appear at the Swanimote, hath Land in the Foreſt, and the Beaſts of a Stranger are on thoſe Lands, and the Tenant of the Lands diſtrains them and impounds them on the ſame Land, and the Beadle of the Foreſt finds them Levant and Couchant there; he may diſtrain the

the ſame Cattle for an Amerciament, in Default of not appearing; but he cannot diſtrain them if they were not Levant and Couchant there.

13. But he cannot break the Lock of a Gate of any incloſed Ground to diſtrain for an Amerciament on the Tenant of that Land or Ground; he may diſtrain in the Highway within the Foreſt, out of any Cloſe or Incloſure.

14. If a Man, who is amerced, doth afterwards pawn or pledge the Cattle, which be in the Foreſt, to another, in ſuch caſe the Beadle cannot diſtrain the ſame ſo long as they are in pawn.

15. But if Iſſues are returned upon the Lands of a Freeholder in the Foreſt, who hath made Default, and he afterwards ſells thoſe Lands, the Beadle may diſtrain on thoſe very Lands for the Iſſues loſt, though they are actually ſold to another.

16. You may ſee, in *Regiſter of Writs, Tit. Diſtreſſes*, of what Things Diſtreſſes may be lawfully taken.

Doe.

See { *Vert*, 14. / *Appendix*, Ch. Foreſtæ, 10. / *Appendix*, Aſſiſa Foreſtæ, 7, 10.

1. A *Doe* is the Second Beaſt of Chaſe, a Buck being the Firſt; and 'tis called, the Firſt Year,

1. *A Fawn.*
2. *A Pricket's Siſter.*
3. *A Doe.*

2. The Seaſon of the *Doe* beginneth on *Holy-Rood-Day*, and laſteth till *Candlemas*.

3. The proper Terms of hunting the *Doe* are the ſame as in hunting the Buck.

4. And every Juſtice-Seat, the Number of Deer muſt be preſented which have been given away by Warrant, and all ſuch which have died, or have been otherwiſe killed, ſince the laſt Court. *Itin. Lanc. fo.* 8.

5. There are ſeveral Statutes which relate to Deer-ſtealing, made in order of Time, as followeth:

6. *ſſ.* By 13 *R.* 2. *cap.* 13. A Lay-man, not having 40 *l. per Annum*, and a Clerk, not having 10 *l. per Annum*, are prohibited to keep *Dogs* to deſtroy Deer; the Puniſhment is Impriſonment for a Year. See *Poſtea*, *Dogs*, 72.

7. By 5 *Eliz. cap.* 11. He who enters into a *Park* to *chaſe* Deer, without the Licence of the Owner, muſt ſuffer three Months Impriſonment, and be bound to his good Behaviour for ſeven Years, which the Party grieved may releaſe in the Seſſions; but he might likewiſe recover treble Damages there.

8. Theſe Laws are ſtill in Force, but they did not prevent Offences of this Nature; therefore, by the Statute 3 *Jac.* 1. *cap.* 13. 'tis enacted, That where a Perſon is convicted at the Seſſions of unlawful *Chaſing* or *Killing* any Deer, he ſhould pay treble Damages to the Party grieved, be committed for three Months, and afterwards to remain there till he found Sureties for his good Behaviour for ſeven Years.

9. Theſe Damages were to be aſſeſſed by the Juſtices, after three Months Impriſonment were expired; but, by the Statute of 7 *Jac.* 1. *cap.* 13. the Party had Liberty, either to take thoſe Damages, or 10 *l.* and when he was ſatisfied, the Juſtices, in Seſſions, might releaſe the good Behaviour.

10. But

10. But this Statute hath been conſtrued to extend only to the *Chaſing* and *Killing* in *Parks*, or Grounds *incloſed* to keep Deer, and not to *Foreſts*, and the Informer had no manner of Reward; therefore, by the Statute of 13 *Car.* 2. *cap.* 10. not only *Chaſing*, *Courſing* and *Killing*, but *Hunting* or *taking* away any Deer in Grounds where they are kept, is puniſhable by the Payment of 20 *l.* a Moiety thereof to the Informer, and the other Moiety to the Owner of the Deer, if the Offence was committed againſt his Conſent, or the Conſent of the Keeper: The Conviction muſt be before one Juſtice of Peace, either by Confeſſion of the Offender, or the Oath of one Witneſs. This Penalty is to be levied by Diſtreſs, by Warrant of the Juſtice before whom the Conviction was made; and if no Diſtreſs can be taken, then the Offender is to be committed, by the Juſtice, to the Houſe of Correction for ſix Months, or to the common Gaol for a Year, and not to be diſcharged afterwards, till he can find Security for his good Behaviour for a Year after his Inlargement.

11. Thoſe who are *aiding* or *aſſiſting*, incur the like Puniſhment. This Penalty of 20 *l.* was too little to be inflicted on Offenders of this Nature; for they would kill and wound many Deer at the ſame time, and yet the Forfeiture or Puniſhment was no more than 20 *l.* Therefore, by the Statute of 3 & 4 *W.* & *M.* for *courſing* or *hunting*, the Offender forfeits 20 *l.* for taking in *Toils*, *killing* and *wounding*, he forfeits 30 *l.* for *every Deer*, one Third to the Informer, another to the Poor of the Pariſh where the Offence was committed, the other to the Owner of the Deer.

12. The Proſecution muſt be within a Year after the Offence; the Conviction before one Juſtice of the County where it was done, or where the Offender was taken; and if no Diſtreſs can be had,

had, then he is to be committed for a Year, and to ſtand in the Pillory one Hour on a Market-Day, in a Town next adjoining to the Place where the Offence was done.

13. By the ſame Statute, a Conſtable may, by Warrant from one Juſtice, enter and ſearch the Houſes of ſuſpected Perſons; and if he find any Veniſon or Deer-Skins, or Toils, he ſhall carry the Party before a Juſtice, and if he do not give a good Account how he came by them, and produce the Perſon of whom he bought it, or prove the Sale upon Oath, he ſhall be convicted of the Offence, and be ſubject to the Penalties for *killing Deer*, and to be levied in the ſame manner.

14. If he do not immediately pay down the Money upon Conviction, the Conſtable may detain him in Cuſtody till a Return is made of the Warrant for the Diſtreſs; but he cannot detain him above two Days.

15. And no *Certiorari* ſhall be allowed to remove the Conviction or other Proceedings, until the Offender, thus convicted, ſhall enter into a Bond of 50 *l.* to the Proſecutor, with Sureties, to be approved by the Juſtice, to pay full Coſts, upon Oath, within one Month after the Conviction confirmed, or a *Procedendo* allowed.

16. *In Sid. fo.* 286. there is a Caſe of a Deer-ſtealer, convicted for that Offence at the Seſſions, and fined, and a Writ of Error brought in the *King's-Bench*; and the Court being moved to bail the Offender till the Errors ſhould be argued, the Motion was denied, becauſe he was in Execution for the Fine; but this was before the making the Statutes laſt mentioned.

17. The Statutes which relate to the Puniſhment of thoſe who keep *Guns* and *Engines* to kill Deer, are,

18. *ſſ.* 19 *H.* 7. *cap.* 11. He who keeps *Deer-Hays*, or *Buck-Stalls*, or *ſtalks* any Deer with *Buſh*, (except

(except in his own Park, forfeits 40 *s. per* Month for *keeping* ſuch *Deer-Hays*, and 10 *l.* for *ſtalking*.

19. Two Juſtices in Seſſions may examine the Offender, and commit him till he pay the Forfeiture; of which the Juſtices are to have the tenth Part.

20. By the Statute of 3. *Jac.* 1. *cap.* 13. He who keeps a Gun to kill Deer, not having 40 *s. per Annum*, in Lands, or worth 200 *l.* in Goods, any Perſon having 100 *l. per Annum*, may take away the Gun and keep it.

Dogs in a Foreſt.

See { *Charge in Chief. Juſtice*, 34, 35, 36, 40, 45, 49. / *Doe*, 6. / *Appendix*, Ch. Canuti, 31. / *Appendix*, Ch. Foreſtæ, 6. / *Appendix*, Aſſiſa Foreſtæ, 8, 16, 17.

1. THE Laws of the Foreſt do ſo much regard the neceſſary Uſe of Dogs, for the Safety of Mens Goods and Houſes who live within the Boundaries thereof, that certain Dogs are ſuffered to be kept therein by any Perſon whatſoever: But ſome Sorts are not ſuffered to be kept there, but only by particular Men.

Who may keep Dogs in a Foreſt.

2. *ſſ.* Every Farmer and Freeholder, dwelling in a Foreſt, may keep a *Maſtiff* about his Houſe; but ſuch *Maſtiff* muſt be lawfully *expeditated* according to the Laws of the Foreſt; *viz.* by the *Aſſiſes of the Foreſt*, made in the Reign *H.* 2. *cap.* 6. called, *The Aſſiſes of Woodſtock*, *Maſtiffs* muſt be *expeditated* in a Foreſt, where the Wild Beaſts have any Peace: From which

which it may be plainly inferred, That the Inhabitants of the Foreſt may keep *Maſtiffs* if they are *expeditated*.

3. This likewiſe appears by *Charta Foreſtæ, Artic.6. viz.* That the Inquiry for *lawing* and *expeditating* of Dogs or *Maſtiffs* in a Foreſt, ſhall be made when the *Regard* is made, *viz.* every third Year; and then 'tis to be done by the View and Teſtimony of honeſt Men, and not otherwiſe; Therefore 'tis lawful for the Inhabitants in a Foreſt, to keep *Maſtiffs expeditated*.

4. So likewiſe, in *the Aſſiſes and Cuſtoms of the Foreſt, Artic.* 9. made *Anno 6 Ed.* 1. 'tis ordain'd, *Quòd ſi quis Maſtivus inventus fuerit ſuper aliquam feram, & mutilatus fuerit, ipſe cujus erat quietus erit de illo facto*: So that if the *Maſtiff* be *expeditated*, though he is found on the Deer, yet the Owner ſhall not be puniſhed.

5. The Word *Mutilatus* is not taken there for *muzzled*, as ſome affirm, but for *maimed, lamed*, or expeditated, according to the Laws of the Foreſt; for there is no Law for *muzzling* of Dogs.

6. And, in the ſame *Aſſiſes and Cuſtoms of the Foreſt, Artic.* 16. 'tis ordain'd, *Quòd nullus meſſarius ducat ſecum Maſtivum magnum ad fugandum feras Domini Regis, &c.* By which it appears, That Men may keep *Maſtiffs expeditated* about their Houſes; but they muſt not bring them into the Field to hunt or fright the Deer.

7. So alſo, *in Charta Foreſtæ, Artic.* 6. 'tis ordain'd, *Et ille cujus Canis inventus fuerit tunc non expeditatus det pro miſericordia tres ſolidos*; (*i.e.*) Shall be amerced three Shillings: By which it appears, That *Maſtiffs* may be kept in a Foreſt, being *expeditated*, and not otherwiſe.

8. And this Law is to be underſtood of *Maſtiffs*, only *in the Foreſt*, and not of thoſe which are out; for there is no Occaſion of expeditating any Dogs out

out of the Foreſt: Therefore the Law doth not extend to them.

9. Beſides, the Words in the beginning of the ſaid Firſt Article, are, *viz. Inquiſitio vel viſus de expeditatione Canum exiſtentium in foreſta noſtra, de cætero fiat quando fieri debet regardum*: By which it appears, That *Maſtiffs*, being *expeditated*, may be kept in the Foreſt.

10. And, becauſe there is no Law directing who may keep ſuch *expeditated* Dogs, therefore it is generally to be underſtood, That every *Gentleman*, *Husbandman*, *Farmer* and *Houſe-keeper*, of any Worth, dwelling *within the Foreſt*, may keep them for the Security of their Houſes and Goods.

What Dogs may be kept within the Foreſt.

11. There are two Sorts of Dogs which, by the Laws of the Foreſt, are allowed to be kept therein; *viz.* The *Maſtiff*, being *expeditated*, and the *little Dogs*, which are mentioned in the Laws of *Canutus*, 32. *Quia manifeſtè conſtat in iis nihil eſſe periculi*; therefore *cuilibet licebit ſine genuſciſſione eos cuſtodire.*

12. Such *little Dogs* are likewiſe mentioned in *the Aſſiſes and Cuſtoms of the Foreſt*, *Artic.* 16. *viz. Nullus meſſarius ducat ſecum Maſtivum magnum ad fugandum feras Domini Regis, ſed parvos catulos ad expectandum extra Coopertum*, ſi. *little Dogs* to look after things out of the *Covert*: So that ſuch *little Dogs* may be kept in the Foreſt, and the Mowers may bring them into the Field.

13. Likewiſe, *Greyhounds*, and Maſtiffs not expeditated, may be kept by ſome Men, and in certain Places in the Foreſt.

14. In the *Aſſiſes of Pickering*, *Anno* 10. *Ed.* 3. A Man claimed to be quit of *Footgeld*, that is, to keep Dogs in the Foreſt, without being *expeditated*, and without any Amerciament, Fine or Forfeiture

for

for it; and he producing a Grant for the ſame, his Claim was allowed; but, it ſeems, a Man cannot preſcribe for the ſame, becauſe ſuch preſcription cannot have any reaſonable Commencement.

15. In the *Aſſiſes and Cuſtoms of the Foreſt, Artic.* 17. mention is made of keeping *Maſtiffs* in a Foreſt, *unexpeditated*, and alſo of *Greyhounds*, in theſe Words; *viz. De his qui clamant habere libertates, ſicut Canes inexpeditatos & Leporarios infra metas foreſtæ, nihil eis faciendum ſine Warranto Domini Regis vel Juſticiariorum ſuorum.* By which it appeareth, That he who hath a lawful Claim, by good Title, may keep *Maſtiffs*, in a Foreſt, *unexpeditated*, and *Greyhounds* alſo; but ſuch a *Claim* muſt be by vertue of a *Grant* from the King, rather than by Preſcription: *Sed de hoc quære.*

What Dogs may be kept in a Foreſt.

16. *Maſtiffs expeditated*, and *little Dogs* may be kept in a Foreſt; but no other Dogs, without a good *Claim*, by vertue of a *Grant* from the King, or the Owner of the Foreſt.

17. As for *Greyhounds*, there is no Law to *expeditate* them; and yet there is more Danger in thoſe Dogs than in Maſtiffs.

18 'Tis true, *Greyhounds* and *Spaniels* are generally forbid, that is, they are not to be kept in a Foreſt, but only by a *Grant* from the King. This appears in the *Aſſiſes and Cuſtoms of the Foreſt, Artic.* 17. before-mentioned; by which 'tis ordain'd, That thoſe who claim to keep *Dogs unexpeditated*, and *Greyhounds*, in the Bounds of the Foreſt, nothing ſhall be done unto them, without the King's Warrant, or the Warrant of the Juſtices of the Foreſt: From which Words it may be inferred, That *Greyhounds* may not be kept there without a good Claim or Warrant; for if it was lawful to keep them there without a good Claim, it were needleſs

to make any Claim at all; and ſo, in like manner, for other things.) *Si Leporarii invent. ſunt in foreſtâ currentes ad aliquod nocumentum ferarum, foreſtarius debet retinere eos & præſentare in præſentiâ viridariorum & mittere eos Domino Regi vel Capitali Juſticiar. foreſtæ. Aſſiſ. foreſtæ, Artic.* 8.

19. It appeareth, by ſeveral Claims in the *Aſſiſes* and *Iters of Pickering, fo.* 12. That Men have *claimed* to hawk, hunt the Hare, and to keep *Spaniels*, within the Liberties of the Foreſt, which is unlawful without ſuch *Claim*; for it would be in vain to claim the keeping a thing which was lawful to be kept without any Claim.

20. And even from the very beginning of the Foreſt-Laws, it appears, That it was unlawful to keep *Greyhounds* there; for, by the 31*ſt* of the Laws of *Canutus*, tis ordain'd, *Quòd nullus mediocris habebit, nec cuſtodiet Canes quos Angli* Greyhounds *appellant.*

Of Expeditating or Hambling of Dogs in the Foreſt.

21. The Dogs which are allowed to be kept in the Foreſt, muſt be ſuch which are not able of *themſelves* to hurt the Deer; or ſuch which are diſabled, by the *Law of the Foreſt*, to hurt them; which *Diſabling* or *Lawing* of Dogs, was called *Hambling* by the Antient Foreſters; but now 'tis called *Expeditating*, and it was inſtituted for the Quiet and Safety of the Wild Beaſts.

22. The *Regarders* of the Foreſt are every third Year, to ſee what Dogs are *Expeditated*, and what not; and if there are any ſuch, the *Regarders* are to preſent the ſame, and who are the Owners; and upon ſuch Preſentment, the Dogs are to be *expeditated*, and the Owners amerced 3 *s.* and every third Year, there ought to be a General *Expeditation* of all the *Maſtiffs* in every Ward and Bailiwick throughout

throughout the Forest, upon the Presentment and Testimony of the *Regarders*.

What Dogs shall be expeditated.

23. In the 6th *Artic. in Chartâ foreſtæ*, there are these Words; *viz. Inquisitio vel visus de expeditatione Canum existentium in Foresta*, and doth not mention what Dogs; and since the Word *Canis* may be taken for any sort of Dogs, it may be doubtful what Dogs are there intended.

24. And in the same *Article*, there are these Words; *viz. Et ille cujus canis inventus est*; and in another Place, *Nec expeditentur Canes, &c.* in all which Places the Word *Canis* may be taken for any Dog.

25. So in the *Assises and Customs of the Forest*, *Artic.* 17. *De his qui clamant libertates habere, sicut Canes inexpeditatos, &c.* there also the Word *Canes* may be indifferently taken for all sorts of Dogs; yet by the Law, it shall be intended for *Mastiffs* only. 4 *Inst.* 308.

26. The Reason is, because, after the Words *De Expeditatione Canum*, these Words follow; *viz. Talis autem expeditatio fiat per assisam communiter usitatam*, that is, by the *Assises* of *H.* 2. and then sets down the Manner how they shall be *expeditated*.

27. And farther, 'tis mentioned there in what Manner Dogs shall be *expeditated*, and in what Places; *viz.* where they have been used to be *expeditated* at the time when *H.* 2. was first crowned: So that all that Article relates only to the *Assises* of *H.* 2. called, *The Assises of Woodstock*, which were made before *Charta foreſtæ*; and in those Assises, it appeareth, that the Word *Canis* signifies *Mastiffs* only, and no other Dogs; for the Words are, *Item*

Rex præcipit quòd expeditatio Maſtivorum fiat ubicunque feræ ſuæ pacem habent vel habere conſueverunt.

28. So that here the Words *Expeditatio Canum* are explained, and 'tis ſhewed what Dogs are intended, *viz. Expeditatio Maſtivorum.*

29. *Anno* 6 *Ed.* 1. *Artic.* 9. *in Aſſiſa foreſta* beforementioned, there are theſe Words; *viz. Si quis Maſtivus inventus fuerit ſuper aliquam feram & mutilatus fuerit, ipſe, cujus Canis erit, quietus erit de illo facto: ſi non mutilatus fuerit, ipſe cujus Maſtivus, erit culpabilis tanquam de manu facta*: In which Sentence, the Words *Canis & Maſtivus*, are ſynonymous, and the one is meant by the other.

30. So that though the Letter of the Law is general, yet it muſt be conſtrued by the Word *Canis* to mean a *Maſtiff*, and no other Dog.

31. *Budæus* calleth a *Maſtiff*, *Moloſſus*; and, in the Old *Britiſh* Language, that and all other Barking Curs about Houſes in the Night, were called *Maſetbefes*, becauſe they maze and fright *Thieves* from their Maſters; but the Word *Maſtivus* is uſed in the old *Aſſiſes of the Foreſt*, made before *Charta foreſtæ*, and in thoſe *Iters* and *Aſſiſes* which were made ſince, that every Man might the plainer underſtand, a *Maſtiff* was meant by that barbarous Word.

Beſides, the Word *Canis*, without any Addition, may be more properly taken for a *Maſtiff*, than for any other Dog; for *Budæus* calleth a *Greyhound*, *Canis venaticus*, and *Canis venatorius*; and in another Place *Canis Leporarius*; and a *Spaniel* he calls, *Canis fugax*, and in another Place, *Canis odoriferus*; all which are Additions to the Word *Canis*; ſo that where 'tis uſed alone, 'tis rather taken for a *Maſtiff*, than any other ſort of Dog.

By whom Dogs shall be expeditated.

33. By *Charta foreſtæ, Artic.* 6. 'tis ordain'd, That the Inquiry of expeditating Dogs in the Foreſt ſhall be made every third Year when the *Regard* is made, but doth not ſay by whom the *Maſtiffs* ſhall be expeditated; but 'tis to be done by the whole Regard and by the Foreſters, who go with them, or by the Regarders themſelves, without the Foreſters.

34. This appears in the 13th *Article* of the Charge of the *Regard*, which was made and uſed in the Reign of *H.* 2. to which the Charter of the Foreſt relates; *viz. In Capitulo de Regardo faciend'. Art.* 13. The Regarders of the Foreſt ſhall view all the Maſtiffs in the Foreſt whether they are expeditated, and to inquire who keep any not expeditated, and, at the next Swanimote after they have made their Regard, to preſent what Maſtiffs are not expeditated, and who are their Owners.

35. But as yet there was no Law enjoining *who* ſhall expeditate Maſtiffs, therefore it muſt be done according to the Charter and Laws of the Foreſt, *Artic.* 6. *viz. Et tunc fiat per viſum & teſtimonium legalium hominum & non aliter*; that is, Such Courſe muſt be taken therein as at Common Law, or in any other like Caſe by the Foreſt-Laws, which is to proceed by judicial Sentence from the Court.

36. For, after the whole *Regard* have made ſuch View and Inquiry about the Maſtiffs in the Foreſt, and have made their Preſentments to the Verderors, of all ſuch which are kept there, and whoſe they are; then the Court of Swanimote, or Court of Attachments, may cauſe all thoſe Maſtiffs to be brought before them at the Forty Days Court; and there the Court may appoint a Perſon, with Inſtruments convenient for the Purpoſe, to expeditate

ditate them according to Law; which being done in this Order, 'tis done *per viſum & teſtimonium legalium hominum.* So that, in this Caſe, the Law of the Foreſt is like the Common Law; for if an Offender is to be puniſhed, and no Perſon appointed by that Law who ſhall do it, it is always reſerved to the Diſcretion of the Court, before whom he hath been convicted of the Offence.

37. As for Inſtance, King *Edward* the Confeſſor made this Law; *viz. Volo ut omnis homo abſtineat à venariis meis ubicunque pacem eos habere volo ſuper pœnam vitæ:* This is *in Libro Sancti Edwardi Confeſſoris in Scaccario*, where hunting in his Foreſts is puniſhable by Death; but the Law doth not declare who ſhall be the Executioner, for that is left to the Diſcretion of the Juſtices of the Foreſt before whom the Offender ſhall be convicted, who pronounce the Sentence, and appoint both the Perſon and Place for the Execution.

38. So likewiſe, in this Caſe of *expeditating Maſtiffs*, ſince the Law hath appointed they ſhall be expeditated, there muſt be a Perſon for that Purpoſe; and ſince, by *Charta foreſtæ*, *Artic.* 6. 'tis ordain'd, it ſhall be done by the View and Teſtimony of lawful Men, and not otherwiſe; and the View and Inquiry being to be made by the *Regarders* of the Foreſt, who are twelve lawful Men, ſworn and appointed for that Purpoſe; when they have given in their Verdict to the Court of Swanimote, what *Maſtiffs* are in the Foreſt, *unexpeditated*, and to whom they belong, that Court may cauſe the Foreſters, within whoſe Bailiwick the Owners of ſuch Maſtiffs dwell, to bring them thither, where the Court may appoint one to expeditate them according to the *Aſſiſes of the Foreſt*; or otherwiſe may order the Owners of thoſe Maſtiffs to bring them before the *Verderors* at the next Court of *Attachments* to be

held after the *Swanimote*, and after such Inquisition of the Regarders; and then that Court will appoint one to expeditate all such Mastiffs which are returned by that Inquisition to be expeditated: For the Verderors being the Judges of those Courts, they are to give Judgment, and to see that Execution be done; and they are likewise to see that 3*s*. are levied on the Goods and Chattels of those Men who have kept their Dogs unexpeditated, which is to be paid to the Verderors for the Use of the King: All which is to be entered in the Rolls of the Forest, and the Verderors are to accompt for the Money so received, before the Lord Chief Justice in Eyre, at the next Justice-Seat.

39. Some Men have claimed a Privilege to be free from expeditating Dogs; but this is only a Personal Privilege, and shall not be revived by general Words in a Grant, as, *tot, tanta, talia, &c.* for then every one who is now in the Land, will keep each of them a Dog, when there might be but one kept before, and so there might be as many Dogs as Deer. *Jones's Rep.* 271. See *antea Common*, 15.

In what Manner such Dogs shall be expeditated.

40. The Manner of expeditating Dogs is mentioned *in Chartâ foreſtæ, Artic.* 6. *viz. Talis autem expeditatio fiat per Aſſiſam communiter uſitatam*, viz. *Quòd tres Ortelli abſcindantur ſine pellota de pede anteriori*, that is, (Three Claws of the Fore-feet shall be cut off by the Skin: And accordingly the same is now used, by setting one of his Fore-feet upon a piece of Wood eight Inches thick, and a Foot square, and then setting a Chizel of two Inches broad upon the three Claws of his Fore-foot, to strike them off at one Blow; and this is the manner of *expeditating Mastiffs.*)

In

In what Places Dogs are to be expeditated.

41. In the *Assises of Woodstock, Artic.* 6. made in the Reign of *H.* 2. there are these Words: *Item Rex præcipit quòd expeditatio Mastivorum fiat, ubicunque feræ suæ pacem habent vel habere consueverunt.*

42. By which Law it may seem, that *Mastiffs* are to be expeditated in *Chases* as well as in Forests, because the Beasts are as undisturbed there, as in Forests; but it was never yet taken or understood in this Sense, because those *Assises of Woodstock* are, *Tantùm Assisa Forestæ non Chaseæ*, and therefore the Law extends only to *Forests*; and I never read of any Mastiffs expeditated in Chases.

43. Besides, there are no *Regarders* in Chases, and Mastiffs are not to be expeditated but where the *Regard* is to be made, and that is only in *Forests*. This is by the express Words of *Chartæ forestæ, Artic.* 6. by which it is likewise ordained, That *Inquisitio vel visus de expeditatione Canum existentium in foresta fiat, &c.* by which it appears, that Dogs are to be expeditated only in *Forests*, for the Laws of the Forest do not extend to *Chases*; and no Forest is exempted from this Law without the special Grant from the King for that Purpose.

44. 'Tis true, there have been some Opinions, That *Mastiffs* are not to be expeditated, but only in such *Forests* where it hath been *accustomed* so to do in the Reign of *H.* 2. and such Opinions were grounded upon the 6th Article *in Chartâ de foresta*, viz. *Nec expeditentur Canes de cætero nisi in locis ubi consueverunt expeditari tempore primæ Coronationis præd Henrici Regis avi nostri, &c.*

45. But the Meaning of those Words is not to exempt the antient Forests from expeditating Mastiffs, but only such Places which were once

Foreſts, and which, by the Firſt and Second Article, were to be diſafforeſted.

46. For in the Sixth Article of the *Aſſiſes of Woodſtock*, 'tis expreſly ordain'd, That *Expeditatio Maſtivorum fiat ubicunque feræ pacem habent, &c.* So that though by the Firſt and Third Article of the Charter, all the *New Afforeſtations* which were by *H.* 2. *R.* 1. or King *John*, were appointed to be *diſafforeſted*; yet, becauſe in thoſe Places the Wild Beaſts were once quiet as they were in Foreſts, the *Maſtiffs* were ſtill to be *expeditated*; and therefore, in that Article of the *Charter*, where the Manner of expeditating Dogs is expreſſed, this Exception was made, *viz. Nec expeditentur Canes de cætero niſi in locis ubi conſueverunt, &c.* as if he ſhould have ſaid, *Maſtiffs* ſhould not be *expeditated* in any of thoſe Places, which were once, or are ſtill, *Foreſts*, and which are now to be *diſafforeſted* by this Charter; but they ſhall be expeditated in all Foreſts which were Foreſts at the Coronation of *H.* 2. that is, in all the *Antient Foreſts*, which are to remain ſo ſtill, notwithſtanding that *Charter*.

47. For, by that Charter, all the new Foreſts were generally to be diſafforeſted, and therefore there was no *expeditating Maſtiffs* in thoſe Places; but all the old Foreſts which were Foreſts at the Coronation of *H.* 2. were to remain ſo ſtill, and in them Maſtiffs were and are to be expeditated.

48. So that the Meaning of thoſe Words, *Nec expeditentur canes, &c.* is, That *Maſtiffs* ſhall not be expeditated in any Place but in the antient Foreſts, and which remain Foreſts after the Diſafforeſtation of the new ones; for as in the 2d Article of *the Charter of the Foreſt*, a Clauſe is inſerted to exempt thoſe who were put out of the Foreſt by the Diſafforeſtation, that they ſhould appear no more before the Juſtices of the Foreſt upon the Common Summons, as formerly; ſo likewiſe this Clauſe, *Nec expedi-*

expeditentur canes, &c. is put into the Charter only to exempt and free those Places which are Disforested from the Trouble of expeditating their Mastiffs, as they were wont to do, before the Disafforestation of the new Forests; and therefore, at this time, in all Places in *England*, where Forests are, the Mastiffs must be expeditated, unless they have a Charter or Grant from the King to the contrary.

The Forfeiture for keeping Dogs not expeditated.

49. *In Charta foreſtæ, Artic.* 6. 'tis ordained, *Et ille cujus canis inventus fuerit extra non expeditatus det pro miſericordiâ tres ſolidos.*

50. So the Forfeiture for keeping a Mastiff not expeditated, is no more than 3 *s.* but if the Dog doth hurt or kill a Wild Beast of the Forest, then the Owner is to be punished according to the Quality of that Offence, and above the said Forfeiture.

Who ſhall be chargeable with the Forfeiture, and in what Manner.

51. By the same Article 'tis provided, *Quod ille cujus Canis inventus fuerit*; that is, There must be an Inquisition taken by the *Regarders* of the Forest, to certify who is the Owner of the Dog so found, *&c.* which must be presented, upon their Oaths, to the *Verderors*; and then upon such Matter of Record, the Court may award Process to levy the 3 *s.* and not before.

52. So that it seems plain, the Forfeiture cannot be levied before 'tis found by *Inquisition*, and certified to a Court of Record,

1. *What Dog it was.*
2. *Who is the Owner.*
3. *Who doth keep the Dog.*
4. *Where, and in what Place.*

53. That it may appear whether it was kept in the Forest or not, it must likewise be found by Inquisition, what Manner of Dog it is; for if 'tis not a *Mastiff*, the Owner is not liable to the Forfeiture, for no other Dog is to be *expeditated* by the Laws of the Forest.

54. It must also be found, who is the proper Owner of the Mastiff; for, according to the Opinion of Mr. *Hesket*, *fo.* 17. he only is chargeable to pay the 3 *s.* He is likewise of Opinion, that if the *Regarders* of the Forest, upon their View and Inquisition, do present, That a Mastiff is kept in the Forest not expeditated, *Et quòd ignorant cujus Canis ille est*, this is a void Presentment, because the Owner is not found.

55. But yet in such Case the Officers of the Forest may take away the Dog; and if he hath hurt any of the Wild Beasts, then he who *kept* the Dog, though he is not the *Owner*, shall be answerable for the same; and if an Action of Trespass or Replevin should be brought against the Defendant for taking and carrying away such Dog, and the Plaintiff should recover a Verdict, then, upon such Trial, and the first Presentment, the Plaintiff who now appears to be the Owner, shall pay the 3 *s.*

56. If the *Regarders* find and present that a Dog is kept in the Forest *unexpeditated*, and that 'tis the Dog of *A. B.* this is a good Presentment; and the said *A. B.* cannot disclaim, nor say, that the same

is

is not his Dog generally; for that would be againſt the Preſentment and Return of the Officers upon Oath, and againſt that which is found by matter of Record for the King.

57. If a Man is indicted for *keeping* a Dog of *T. R.* in the Foreſt not expeditated, and he pleads, that 'tis not his Dog, this is no Plea, without ſetting forth the Property to be in ſome certain Perſon; and if the Jury ſhould find, that the Property is not in that Perſon, nor yet in *D. A.* this is no good Verdict, for it ought to find in whom the Property was.

58. 'Tis like the Caſe of an Indictment before the Coroner, *ſuper viſum Corporis*, to which the Defendant pleads, not guilty, and the Jury find him ſo: This is no good Verdict without preſenting another Perſon who did the Murder; which Preſentment ſhall be in nature of an Indictment againſt him.

59. If the *Regarders* find and preſent ſuch a Dog kept at or in the Houſe of *D. A.* in the Foreſt, he ſhall not be amerced upon this Preſentment; but if they preſent, that *D. A.* kept the Dog, this is good, and he ſhall be fined 3 *s.*

60. But if they preſent, that *D. A.* did deliver a Dog to *A. D.* to keep in the Foreſt, and that he did keep that Dog there unexpeditated, in ſuch Caſe *D. A.* who delivered the Dog, ſhall be charged with the 3 *s.* and not *A. D.* to whom it was delivered.

61. If they preſent, that *D. A.* delivered the Dog to *A. D.* to keep for a certain time only, and that he accordingly kept the Dog in the Foreſt unexpeditated, there, both the Deliverer, and he to whom it was delivered, ſhall be charged; but if *D A.* delivered it only to be kept as a *Pawn* for Money, there he to whom it was delivered, ſhall be only charged.

60. If

62. If 'tis found, that *D. A.* as a Trespasser, *vi & armis*, did take the Dog of *A. B.* and kept him in the Forest unexpeditated; in such Case *A. D.* the Owner of the Dog, shall be charged with the 3 *s.* and not *D. A.* the Trespasser.

63. So it is if it be presented, that *D. A. vi & armis*, took the Dog of *A. D.* who brought a Replevin for such taking; and that *D. A.* kept the Dog in the Forest unexpeditated; in this Case the *Owner* of the Dog, and not he who *kept* him, shall be charged.

64. And if 'tis presented, that one *D. A.* hath kept two Mastiffs in the Forest unexpeditated, he shall not be amerced 3 *s.* for each Dog, but so much only for both; but if two Men have, jointly or in common, one *Mastiff*, each of them shall be severally amerced.

65. But 'tis otherwise if the Husband and Wife have kept one Dog; for the Husband only shall be amerced, they being but one Person in the Law: Neither shall the Wife be charged upon such a Presentment after the Husband's Death; but if they had the Dog in the Right of the Wife, as *Executrix* to another Person, in such Case, if she survive her Husband, she shall be charged upon that Presentment.

66. If a *Peer* of the Realm, or a *Bishop*, is presented for keeping such Dog, he shall pay only 3 *s.* and not according to his Quality; but if a Peer is presented and indicted before the Justices of the Forest for keeping a *Greyhound*, and hunting with him there, in such Case he may be amerced by the said Justices according to his Dignity and Estate.

67. The Words in *Charta de foresta, Artic.* 6. are, *viz. Det pro misericordiâ tres solidos*: Upon which Word *Det*, Mr. *Hesket* hath observed, that the Amerciament of 3 *s.* is to be levied presently by Distress,

Diſtreſs, and before the coming of the Juſtices in Eyre; and ſo it hath been uſually done, as appears by the Rolls and Preſentments of the Regarders in ſeveral Foreſts; for he is of Opinion, that this Caſe is like an Amerciament of a Leet.

68. This Article for the View and Inquiſition of expeditating Dogs, differs from any other Article of the *Regard*, becauſe the *Regarders* may aſſeſs the Fine themſelves; and upon their Preſentment certified and returned of Record before the Verderors, the Fine may be levied preſently; and he who is preſented and found to have, or kept a Dog in the Foreſt *unexpeditated*, ſhall pay 3 *s.* and if he will keep the Dog ſtill, he muſt have him expeditated, or muſt not keep him in the Foreſt.

69. This is the Opinion of Mr. *Heſket*, in his reading on the Foreſt-Law; but whether 'tis Law or not in every Point, *quære*.

Why it is called expeditating or hamling.

70. The Word *Expeditor* is a *Latin* Word of Art, it ſignifies, to lame, or make one halt or unable to run, and 'tis uſed inſtead of *Mutilo*.

71. But in *the Aſſiſes and Cuſtoms of the Foreſt*, *Artic.* 9. made in the Reign of *Ed.* 1. the Word *Mutilatus* is uſed inſtead of *Expeditatus*, as a more proper and ſignificant Word, and much better *Latin*.

72. In the 31ſt Canon of *Canutus*, the *Jewing* of Dogs is called *Genuſciſſio*, which was a cutting or laming them in the *Hams*; and therefore the old Foreſters called it *Hamling* or *Haxing*, and ſome called it *Hockſinewing*.

73. King *H.* 2. was the firſt who cut off the *Claws* of the Fore-feet of *Maſtiffs*, and therefore he called it *expeditatio*, that is, by making them unable to run *expede*, *viz.* from the hurt of the Foot, by

by cutting off three Claws, *Assis. Woodstock, Artic.* 6. Serjeant *Fleetwood* was of Opinion, that 'tis called, *Expeditatio, quasi ex pede statio, viz.* a Let or Stay to run, and caused by that Hurt of the Foot; but this seems to be a Jingle.

74. By the Statute of 13 *R.* 2. *cap.* 13. it is enacted, That if any Artificer, Labourer, or other Layman, who hath not Lands to the Value of 40 *s. per Annum*, or any Priest or Clerk who hath not a Living to the Value of 10 *l.* a Year, will have or keep any Greyhound, Hound or other Dog to hunt, or Ferrets, Hays, Nets, Hare-pipes, Cords, or other Engines, to take or destroy Deer, Hares, Conies or other Game, he shall be committed for a Year.

75. By another Statute made 1 *Jac. cap.* 27. All Persons, except such who are seised in their own Right, or in the Right of their Wives, of Lands or Tenements of Inheritance to the Value of 10 *l.* by the Year, or of 30 *l.* for Life, or possessed of Goods or Chattels to the Value of 200 *l.* or the Son of a Knight or Baron, or of higher Degree, or the Son and Heir apparent of an Esquire, and who shall have or keep any Greyhound to course Deer or Hare, shall be committed to the common Gaol for three Months without Bail, except he forthwith pay 40 *s.* to the Churchwardens of the Parish where the Offence was committed, or the Party apprehended for the Use of the same Parish.

76. The Qualifications for keeping a Dog, by the Statute of 22 & 23 *Car.* 2. *cap.* 15.

1. He must either be Owner of a Free Warren.

2. A Lord of a Manor.

3. Or he must have an Estate of Inheritance of 100 *l. per Annum*, either in his own Right, or the Right of his Wife, or for Life.

4. Or

4. Or must have a Lease for 99 Years, of 150 *l.* *per Annum.*

5. Or must be the Son and Heir of an Esquire, or one of higher Degree.

77. The Forfeiture is any Sum not exceeding 20 *l.* for every Dog; a Moiety to the Informer, the other to the Poor of the Parish where the Offence was committed; and if the Sum cannot be levied by Distress, then the Offender is to be sent to the House of Correction for any Time under a Month, and there kept to hard Labour, *per* 4 *&* 5 *Will. & Mar. cap.* 23. And no *Certiorari* shall be allowed to remove the Conviction or other Proceedings, unless the Party convicted do become bound to the Prosecutor in 50 *l.* with Sureties, before such Allowance, to pay him all the Costs and Charges on Oath, within a Month after 'tis confirmed, or a *Procedendo.*

78. 'Tis likewise enacted by the Statute of 19 *H.* 7. *cap.* 11. That if any Person, having no Park, Chase or Forest of his own, doth keep or cause to be kept, any Nets called *Deer-Hays*, or *Buckstalls*, he shall forfeit, for every Month, 10 *l.* to any Person who shall sue for the same by an Action of Debt, wherein no Wager of Law, *&c.* shall be allowed.

79. And by the Statute 3 *Jac.* 1. *cap.* 13. If any Person not having Lands of 40 *l.* *per Annum*, or not worth 200 *l.* in Goods, shall keep any Buck-stall, *&c.* or Cony-Dogs; then any Person having 100 *l.* *per Annum* of any Freehold Estate, may take away such Dogs, *&c.* to his own Use.

80. By the aforesaid Statute 1 *Jac.* 1. it is farther enacted, That no Person shall be punished by force of any former Statute or Law, for any Offences for which any Punishment shall be inflicted by force of that Law.

81. Now

81. Now these Statutes may very well extend to prohibit such Trespassers who shall commit any Offences in the King's *Forests*, *Chases*, or *Parks*; yet they seem rather to relate to those who are Trespassers in other Men's Parks, *&c.* and not in the King's Forests, *&c.* because the Forest-Laws, which were made long before these Statutes, had provided against all such Offenders in *Forests*, *Chases*, and *Parks*.

82. But these Statutes being made in the Affirmance of the antient Law, the King may at his Pleasure proceed against such Offenders, according to the one or the other.

83. By the Statute 5 *Annæ*, he who keeps *Greyhounds*, *Lurchers*, *Setting-Dogs*, to kill the Game, being not qualified, forfeits 5 *l.* a Moiety to the Informer, the other to the Poor, and that Act is made perpetual by the Act 9 *Annæ*, *cap.* 25.

84. The Parson of *Skally* in *Yorkshire* was indicted, for that his Dogs were not *expeditated*; he pleaded, That *Ecclesia Anglicana sit libera & habeat omnes Libertates suas integras & illæsas*, and by this Plea he was discharged.

85. *Ministri forestæ dicunt quòd consuetum est ante hæc tempora præsentare quolibet tertio Anno de canibus non expeditatis.*

86. *Item dicunt quòd à tempore quo non extat memoria hominum, &c. præsentat. fuit per forestarios ad Attachiamenta istius forestæ de canibus prædicti Abbatis de Rivall, &c. in maneriis suis prædictis non expeditatis.*

87. The above mentioned are Forms of Entries *in placitis forestæ de Pickering*, *Anno* 8 *Ed.* 3. but a Claim to be privileged from expeditating Dogs, is a mere personal Privilege, and shall not be revived by general Words in a Grant, such as *tot*, *talia & tanta Privilegia*, *&c.* for then, where the Possessor kept but one or two Dogs, every one

one who hath a new Grant of any Part of his Lands, may keep a Dog; and this may multiply them to the Destruction of the Deer. *Jones, Rep.* 271.

88. 'Tis part of the Riding Forester's Office to have the care and view of Lawing Dogs.

Drifts of the Forest.

See { *Charge in Chief Justice*, 63. / *Appendix in Stat.* 32 *H.* 8.

1. THE Officers of the Forest do usual *drive* it where there is commoning with Beasts, that the same may not be surcharged by those who have a Right of Common; and also to avoid the Commoning of *Foreigners*, who have no right to common there. 4 *Inst.* 309.

At what Time of the Year the Forest shall be driven.

2. By the Assises of the Forests of *Pickering* and *Lancaster*, *fo.* 123. the Officers of the Forest *there* did usually make two Drifts of their Forest every Year, (*viz.*) fifteen Days before *Midsummer*, at the beginning of the *Fence-Month*, because at that Time no Man might have any Beasts commoning there; so that by this Drift the Forest was cleared of all Cattle during that Month only; for every Man who had any Cattle at that Time commoning in the Forest, was to take them away when that Drift was made, otherwise the Officers of the Forest might *seize* them to the King's Use, as *Estrays*.

3. And if the Cattle of any *Foreigners* dwelling out of the Limits of the Forest were found com-

moning, who had no right of Common there, in such case the Owners were to be punished according to the Laws of the Forest.

4. The next Drift of the Forest was usually made about *Holyrood-Day*, when the Officers began to agist the King's Woods, at which Time all manner of Cattle which were found commoning in the Forest, were taken by the said Officers and impounded in some convenient Place adjoining; and then the Under-Foresters, Walkers, and *Woodwards* of every Parish, Village, and Hamlet, gave Notice in every Ward that the Owners might come and fetch them away; and then, upon the Delivery of the said Cattle to the respective Owners, a perfect Roll was kept thereof, *(viz.)* What number of Cattle every Commoner had, and what Beasts they were, where the Owner dwelt, what Free-Land he had of his own, or of any other Person in his Tenure or Occupation; and this Order was every Year observed and kept, so that it was known who had right of Common there, and with what Number of Beasts, and who was a *Surcharger*, and also who did agist the Beasts of *Strangers* or *Foreigners* there, for by the Laws of the Forest no *Foreigner* may common there without a Grant from the King.

5. And if the Beasts of any *Foreigner* are found commoning there, tho' they came thither by *Chance*, yet the Owner shall be amerced for every Foot of those Beasts, one Penny for the first Offence, and in like manner for the second Offence, but the third Time they are *forfeited* to the King, and then the Foresters may *seize* them and deliver them to the *Verderors*, and they must enter it on the Forest-Rolls, that the King may be answered of the Value thereof: *Assis. Pickering, fo.* 15, 17, 19.

6. In

6. In the case before mentioned, the Beasts of such *Foreigners* must come into the Forest of *themselves* without the Procurement or Drift of the Owner; but if he will *voluntarily* drive them thither to common there, *Quære*, If they are not *forfeited* for the first Offence? See *Assis. & consuetud. Forestæ. Artic.* 15.

7. And it seems very reasonable that the Cattle of *Foreigners* who have no Free Land in the Forest, should have no manner of Common there, because of Right it belongeth to the Inhabitants, and to such who have Lands and Tenements in their Tenure and Occupation there; for they only are subject to the burthen and inconveniences of the Forest in their Corn, Meadows, and Pastures, where the Deer often feed; and for that cause they are to have the Benefit of the Common, for *Qui sentit onus sentire debet & commodum. In decretali Bonifacii*, 8.

How often in every Year the Forest shall be driven.

8. Tho' the Officers of the Forest of *Lancaster* did drive their Forest twice in a Year, yet they might have driven it oftner if they would, and as often as it shall be necessary so to do; but by the Statute 32 *H.* 8. *cap.* 13. 'tis enacted, That all Forests in *England* and *Wales*, and the *Marches* of the same, shall be driven every Year at *Michaelmas*, or within fifteen Days next after.

9. And it appeareth by the same Statute, That the aforesaid Forests may be driven at any other Time of the Year whensoever, and as often as it shall be convenient so to do: See the Statute in the *Appendix*.

For what cauſe the Foreſt ſhall be driven.

10. Foreſts are to be driven for ſeveral cauſes,

1. For avoiding *Surcharging* of Commons by ſuch who have no right to Common there.
2. That *Foreigners* may be prevented to have any Common there.
3. That no Beaſts be ſuffered there but ſuch as are commonable.

11. By the aforeſaid Statute 32 *H.* 8. *Stone-Horſes* above two Years old are not to common in a Foreſt or Chaſe, unleſs they are fifteen Hands high, to be meaſured from the loweſt Part of the Hoof of the Fore-foot, unto the higheſt Part of the Wither, and every Hand muſt be four Inches of the Standard; but this Statute extends only to Foreſts and Chaſes in *Norfolk*, *Suffolk*, *Cambridge*, *Buckingham*, *Huntingdon*, *Eſſex*, *Kent*, *Hampſhire*, *North Wiltſhire*, *Oxfordſhire*, *Berkſhire*, *Worceſter*, *Glouceſter*, *Somerſet*, *North Wales*, *South Wales*, *Bedford*, *Northampton*, *Yorkſhire*, *Cheſhire*, and *Staffordſhire*, the County of the City of *York*, the Town and Liberty of *Glouceſter*, the County of the Town of *Kingſton* upon *Hull*, the County Palatine of *Lancaſter*, the Counties of *Salop*, *Leiceſter*, *Hertford*, and *Lincoln*.

12. So that by this Statute ſuch Horſes are not Beaſts commonable in any Foreſt or Chaſe in thoſe Counties; and if any ſuch are found there upon any *Drift* made, or otherwiſe, they are forfeited: See Statute 8 *Eliz. cap.* 8.

By

By whom Forests are to be driven.

13. It appeareth by the *Assizes of Lancaster and Pickering*, *fo.* 82. That the Drifts of the Forests there were always made by the attending Officers, (*viz.*) by the *Foresters*, *Verderors*, *Regarders*, *Agistors*, *Woodwards*, by the Bailiff, or Bailiffs, and the four Men and Reeve of every Town.

14. And 'tis necessary that all those Officers should be at the Drift of the Forest, as well to be assisting in driving the Cattle, as also for giving Notice to each other, who are to have Common in every Town, and with what Number and what Sort of Beasts, and also who are *Foreigners*, and whose Cattle are found commoning there, that the Owners may have Notice thereof.

15. But by the Statute of 31 *H.* 8. the Drift is to be made by the Officers of every Forest and Chase, and by no other; and that all Drifts which are made at any other Time of the Year than at *Michaelmas*, shall be made and driven by the Officers of the Forest and Chase, and also by the Constable, Bailiffs, Headboroughs, Burtholders, and Tithingmen, and every of them, within the Limits of their Offices, *quod nota.*

In what manner the Drifts are to be made.

This is likewise declared by the *Assizes of the Forest of Lancaster*, *Anno* 10 *Ed.* 3. *fo.* 69. (*viz.*) That at a certain Day appointed by the general Agreement of all the Officers of the Forest, every *Verderor* goes to his own Ward and Precinct, and then calls every other Officer of that Division, and so they proceed in their Drifts thro' their several Precincts, until they are gone thro' the whole Forest, where any Common is taken by Cattle.

In what Places of Foreſts Drifts ſhall be ſo made.

17. This Courſe may be uſed in all Foreſts and Chaſes where there are any Deer or other Wild Beaſts; and 'tis neceſſary, that Driſts ſhould be made in this or in ſuch Manner, which hath been uſually made in every Foreſt and Chaſe where there are Wild Beaſts of Venery or Chaſe; and this is for the better Government of the Commons and Herbage there.

Of what Cattle Drifts are to be made.

18. All Cattle whatſoever, which are found commoning, muſt be driven out of the Foreſt to ſome convenient Place adjoining, there to be impounded till the Owners ſhall claim them; and then every Man may put his Cattle to Paſture and Feeding again in the Common where they were before.

Eſcapes in a Foreſt: See Amerciaments.

Eſtovers.

See { *Charge in Chief Juſtice*, 66. *Wood*, 48.

1. THe Prior of *Lancaſter* had, by Charter, every Day two Cart-Loads of dead Wood to be burnt in his Priory; and becauſe he took *viridem Boſcum pro mortuo*, contrary to his Grant, his *Eſtovers* were ſeiſed into the Hands of the Lord of the Foreſt, and the Prior was fined, *pro Eſtoveriis rehabendis ad 3 l. 6 s. 8 d. & rehabuit Eſtoveria ſua. Itin. Lancaſtr. Anno* 10. *Ed.* 3. *fo.* 65.

2. A

2. A Man may have *Eſtovers* as appurtenant to a Houſe: This is proved by the Caſe laſt mentioned, where the Prior had a Grant of *Eſtovers* to be burnt in his Priory; and in ſuch Caſe, if the *Eſtovers* are ſpent in any other Houſe, 'tis a good Cauſe of Seiſure of the ſame *Eſtovers*, for this is an *Abuſer* which is a Cauſe of *Forfeiture*.

3. Every Man may take *Eſtovers* in his own Woods by the *View* of the Foreſters, and not otherwiſe; and the Foreſters muſt not take any thing for their *View*; if they do, 'tis Extortion. *Jones's Rep.* 277.

4. Sir *Charles Howard*, amongſt other things, claimed Liberty to cut down as much Fir-Wood in any of the King's Woods in *Windſor-Foreſt*, as he ſhall *think convenient and ſufficient* to burn in his *Houſe* in *New Lodge*. Mr. Attorney *Noy* argued, That this was void, becauſe he had made no Title to *New Lodge*; and if the King grant a Man as much Fire-Wood as he thinks fit to burn in *another Man's Houſe*, 'tis a void Grant, which the Judges agreed.

5. Mr. Attorney alſo argued, That if he had laid a Seiſin in the *New Lodge*, and made a Title to himſelf, yet the Grant had been void, becauſe it was of as much Wood as he ſhall *think convenient* to burn there: So that he might take what he thought convenient to burn, and ſell it when he had done, it was not of ſo much Wood as he *ſhould burn in New-Lodge*, for that had been good. *Jones's Rep.* 294.

6. He likewiſe ſaid, If a Man claim *Eſtovers* to his *Houſe* by *Preſcription*, in ſuch Caſe 'tis ſufficient to alledge a Seiſin of the Houſe in himſelf at that very time when he claimeth them; but if ſuch Claim is by Grant, he muſt averr a Seiſin of the Houſe, *&c.* at the Time when the Grant was made.

7. And in the Caſe of Preſcription, as aforeſaid, he muſt averr, that the Houſe in which the *Eſtovers*

are to be burned, is an antient Houſe, otherwiſe 'tis not good. See *Plus*, Title *Wood*.

Fence-Month.

See *Charge in Chief Juſtice*, 21.

1. MAny provident Laws have been made for the Preſervation of Foreſts, and for repleniſhing them with Wild Beaſts, eſpecially in the Time of *Fawning*; and therefore ſince certain Officers are appointed to attend on Wild Beaſts, and the Vert of the Foreſt at all times in the Year, they ought chiefly ſo to do in the time of *Fawning*, when the young ones are ſubject to the greateſt Danger.

2. *Canutus*, in his 4th Canon, appointed Officers to watch the Deer in the *Night-time* throughout the whole Year: From which it may be inferred, If ſo much Care was taken to watch the Deer at all times in the Year, the Officers ſhould be more careful in this dangerous Time.

3. King *H.* 2. in *the Aſſiſes of Woodſtock*, *Artic.* 4. did appoint, That there ſhould be twelve Knights in every Foreſt, to look after the Wild Beaſts, and to ſee, that all other Officers of the Foreſt who have the Care of them, ſhall give their Attendance for their better Safety and Peace.

4. And King *H.* 3. by the Charter of the Foreſt, *Artic.* 8. did appoint, That the third Court of *Swanimote* ſhould be kept fifteen Days before *Midſummer*, to the Intent, that all the Foreſters, Verderors and Agiſtors, ſhould meet together to make Proviſion for the Safety of the Wild Beaſts during the Time of *Fawning*, which is called, the *Fence-Month*, or, *Tempus Vetitum*, or *Menſis Vetitus*, being the

the Month or Time wherein every Man is forbidden to wander up and down in the Foreſt, or otherwiſe to diſquiet the Deer. 4 *Inſt.* 313.

5. And ſome antient Foreſters call it the *Defence-Month*, becauſe there ought to be Watch and Ward kept at this Time, to defend the Wild Beaſts and their young ones from Danger.

When the Fence-Month firſt began to be kept.

6. 'Tis uncertain, when the keeping of the *Fence-Month* firſt began; 'tis probable it might be in the Reign of *Canutus*, becauſe there were no particular Laws to be obſerved in Foreſts before that Time, and there hath been no Law ſince, enjoining the keeping this Month; and therefore Serjeant *Fleetwood*, in his Collection of Foreſt-Laws, *fo.* 5. tells us, that it hath been always kept in Foreſts ſince that Time; for though Foreſts are privileged Places for the Quiet and Preſervation of Wild Beaſts, yet, in the Time of *Fawning*, there ought to be very diligent Watch kept for that Purpoſe.

7. It appeareth by *the Aſſiſes of the Foreſt of Lancaſter*, *fo.* 7. made *Anno* 8 *Ed.* 3. That the *Fence-Month* was then kept: And by *Charta Foreſtæ*, *Artic.* 8. That it it was kept before the Time of *H.* 3. For by that Charter, it was appointed to keep the third Swanimote, when the Agiſtors and other Officers of the Foreſt, do uſually meet to look after the *fawning* of the Wild Beaſts: So that it was kept before the making that Charter, and therefore 'tis probable, that it hath been obſerved ever ſince the firſt making the Foreſt-Laws, which was in the Reign of *Canutus*; and that when he made Laws for the Preſervation of Foreſts, and the Wild Beaſts therein, the *Fence-Month* was included in thoſe Laws.

When the Fence-Month begins, and when it ends.

8. The *Fence Month* is 31 Days, and always begins 15 Days before *Midſummer*, according to the Charter of the Foreſt; *viz. In initio quindecim dierum ante Feſtum Sancti Johannis Baptiſtæ, quando Agiſtatores noſtri conveniunt pro feonatione Beſtiarum noſtrarum, &c.* and it endeth 15 Days after *Midſummer*, on St. *Cyrill*'s Day.

9. This appears likewiſe *in Aſſiſa foreſtæ Pickering, fo.* 20. and in *the Aſſiſes of the Foreſt of Lancaſter, fo.* 7. in which laſt Aſſiſes 'tis mentioned, That if any Swine are found in the Foreſt, *tempore vetito*, they ſhall be forfeited to the King; and therefore they ſhall be delivered to the *Verderors* to anſwer the Value thereof.

10. The ſame Law concerning Sheep and Goats. Therefore, during this Month, there muſt be diligent Watch and Ward kept in every Bailiwick through the Foreſt, and no Man ſuffered to wander out of the Highway, nor to fetch or drive any Cattle out of ſuch Highway, leſt they ſhould trouble or diſquiet the Beaſts in the Time of *Fawning*.

11. The Execution of the Laws of the Foreſt hath been ſo ſeverely exacted in this Particular, that it appeareth by the antient *Aſſiſes of the Foreſt of Lancaſter, fo.* 19. That no Perſon was ſuffered to come or paſs near the Place where the Beaſts did reſort at this Time.

How every Officer ought to behave himſelf at this Time.

12. The Foreſters, Verderors, Regarders, Agiſtors and Woodwards, are all to be aſſiſting each other in this Service for the *Fence-Month*; and at the Court of Swanimote, which is to be held on St. *Ed-*

St. *Edmund*'s Day, *viz.* 15 Days before *Midſummer*, at which Time the *Fence-Month* begins, the Verderors, who are the Judges of that Court, and the chieſeſt Officers, are to give Directions to all other Officers of the Foreſt in their Courſe.

12. This appears by the *Iters of Lancaſter, fo.* 59. *viz.* The Foreſt of *Lancaſter* is divided into ſeveral Wards, and the Verderors there at the Swanimote Court held for the *Fence-Month*, do divide themſelves to their reſpective Wards; and then each Verderor aſſembles all the other Officers in his proper Diviſion, *viz.* The Foreſters, Regarders, Agiſtors and Woodwards, and gives them Directions how and in what manner, and in what Places, and with what Company, Watch ſhall be kept in every Diviſion by the Foreſters: And this being done by the Privity and Conſent of all the other Officers, 'tis uſual for the Regarders and Agiſtors to join with the Foreſters, and to be aiding and aſſiſting them in any thing requiſite or neceſſary to be done at this time; and likewiſe every Woodward doth uſually attend within his own Charge, to watch with the Foreſters.

13. And at this Time alſo, the Foreſters do give publick Notice at every Houſe in each Bailiwick in the Foreſt, that they keep in all manner of Dogs, and not ſuffer them to go out.

14. The Verderors likewiſe at this time, give a Charge to thoſe who watch and ward, in this Manner:

1. *ſſ.* If they find any Perſon ſuſpiciouſly wandering up and down out of the Highway in the Foreſt, they are to apprehend him, and to bring him before the Verderors.

2. If they find any Dogs running up and down, and likely to do any Hurt, or to fright the Deer, they

they ſhall inquire whoſe Dog it is, and apprehend the Owner and bring him before them.

3. If they ſee any Man hunting or courſing any Wild Beaſt in the Foreſt, they are to do the like by him, *&c.*

4. So likewiſe, if they ſee any Perſon taking or carrying away any young Fawn or Fawns.

5. If they find any Man out of the Highway with a Croſs-bow, Long-bow, Gun, or any other Engine, to hurt or deſtroy the Wild Beaſts, they are to apprehend him, *&c.*

6. If they find any Perſon gathering Ruſhes or Beats, or ſuch like, in the Foreſt, or in the King's Woods or Lands, or elſewhere, to the Hurt of the Wild Beaſts at this Time, they ſhall apprehend him and bring him before the Verderors to find Pledges.

7. If they ſee any Perſon driving Swine to feed in the Foreſt, they ſhall apprehend him and the Swine, and carry him, and drive the Swine, to the Verderors.

8. If they ſhall find any Foreigner driving his Cattle to agiſt in the Foreſt, they ſhall likewiſe apprehend him, *&c.*

9. If they find any Deer hurt or dead, they ſhall inquire how it came, and give Notice thereof to the Verderors.

10. If they ſhall ſee any Offenders or Treſpaſſers in the Foreſt, they ſhall apprehend them, if they can, and bring them before the Verderors; and if they cannot apprehend them, they ſhall make Hue and Cry till they are taken.

11. If any Man ſhall fetch or drive any Cattle through the Foreſt at this Time, to the Hurt or Diſquiet of the Wild Beaſts, they ſhall apprehend him, and bring him before the Verderors.

15. This very Courſe was obſerved and kept in every Point in the Reign of *Ed.* 3. as it appeareth by

by *the Aſſiſes of the Foreſts of Lancaſter and Pickering*; and alſo by the Laws of the Foreſt, this Courſe is ſtill to be kept in every Foreſt in the *Fence-Month*.

16. If any Hogs, Goats or Sheep are found in the Foreſt in this Month, they are forfeited to the King. *Itin. Lancaſtr. fo.* 7.

Foreſts.

See { *Boundaries*, 13. / *Appendix*, Charta Foreſtæ, 1.

BEfore this Nation was repleniſhed with Inhabitants, there were many great Woods full of all ſorts of Wild Beaſts then known in *England*; and after the ſame came to be inhabited, the Woods were, by degrees, deſtroyed, eſpecially near the Houſes; and as the Land increaſed in People, ſo the Woods and Coverts were daily deſtroyed, and, by that means, the Wild Beaſts retired to thoſe Woods which were left ſtanding, and which were remote from their Habitations.

2. But there were ſtill, and even in the *Saxons* Time, many great Woods which were not deſtroyed, and thoſe were called *Wealds*, that is, Foreſts or Woods where Wolves and Foxes did harbour; which being afterwards deſtroyed by *Edgar*, a *Saxon* King, *Anno* 959. and very few remaining, the *Welchmen* paid him a Yearly Tribute of *Wolves-Skins*; and thoſe and ſuch like ravenous Beaſts being thus deſtroyed, the reſidue being Beaſts of Pleaſure, as well as delicate Meat, the Kings of this Land began to be careful for the Preſervation of them, and in order thereto to privilege certain Woods and Places, ſo that no Man may hurt or deſtroy

deſtroy them there; and thus the ſaid Places became Foreſts.

3. *Canutus* the *Dane*, who was King here in the Year 1018, was the firſt who ſet Bounds and Limits to thoſe Foreſts; and the better to have his own preſerved from Offenders, he made this Law at *Wincheſter* in the firſt Year of his Reign, (*viz.*) *Volo ut omnis Liber homo pro libito ſuo habeat Venerem ſive viridem in planis ſuis ſuper terras ſuas, ſine Chaced tamen, & devitent omnes meam ubicunque eam habere voluero*: Upon pain to forfeit as much as a Man may forfeit, which Law was afterwards confirmed by many ſucceeding Kings.

4. As this King made a Foreſt *ubicunque eam habere voluit*, as it appeareth by the aforeſaid Law, ſo in after Ages, when any King intended to do the like, a Commiſſion iſſued under the Great Seal, out of the Court of *Chancery*, directed to certain Perſons, declaring his Will and Pleaſure to make a Foreſt in ſuch a Place, and in ſuch a County, within ſo many Miles of ſuch a Place, commanding them to perambulate and view the County within the Compaſs of ſo many Miles; and to bound and meet ſo much thereof as they ſhould think convenient to make a Foreſt for his Delight and Recreation; and to encompaſs the ſame with ſuch Marks and Boundaries, as the King may know and diſcern it from other Land which is not Foreſt; commanding them likewiſe to certify to the Court of *Chancery* their proceeding therein before ſuch a Day.

5. When the Commiſſioners had viewed the Ground and conſidered how much was convenient for a Foreſt; then they made Perambulations round it, and bounded it with Hills, Rivers, Highways, and ſometimes with remarkable Trees, that the ſame might be known to be a Foreſt; and having returned their Commiſſion into *Chancery*, and there-

therewith certified the circuit and compaſs of the Ground ſo bounded, beginning at ſuch a Bridge, at ſuch a River, the Highway over the ſame leading from ſuch a Place to ſuch a Place, as the Highway there goeth, all on the right Hand of the ſame Highway, is Foreſt, and ſo directly from Mark to Mark, and all the Boundaries round the ſame, until they come to the ſame Place where they began the Perambulation; and this being retorned and certified as aforeſaid, then the King is entituled to it by Matter of Record. 14 *Ed.* 4. *fo.* 2.

6. But as yet it was not a Foreſt, for after this another Writ iſſued out of the *Chancery*, directed to the Sheriff of the County where the Place was ſo retorned to be a Foreſt, which Writ recited all the Proceedings of the Commiſſioners; the circuit of Ground they had viewed and perambulated, and their Retorn and Certificate of the ſame; and that they had appointed ſo much as is contained in that Circuit, and encompaſſed with ſuch Marks and Boundaries to be a Foreſt, and ſo recited the whole Circuit of the ſame by ſuch Marks and Boundaries *Verbatim*, as they had retorned, commanding by the ſaid Writ, That the Sheriff make Proclamation throughout the County, as well in Boroughs and Towns, as alſo in Fairs, Markets, and other publick Places, that the King had appointed that circuit of Ground ſo bounded and thus retorned into his Court of *Chancery* to be a Foreſt, and that no Perſon whatſoever after ſuch a Day, ſhould hunt or chaſe any wild Beaſts of Venery or Chaſe there, *&c.*

7. And yet after ſuch Proclamation made and retorned by the Sheriff into the Court of *Chancery*, 'tis not a Foreſt yet, but a Chaſe, for ſomething more was to be done to make it a *Foreſt*; becauſe neither the Perambulation, nor the Retorn and Certificate into the *Chancery*, tho' 'tis Matter of Record, with-

without any Proclamation, did make the ſame either a Foreſt or Chaſe, but only a Territory of Ground; for tho' by the Return of the Perambulation the King is entituled by Matter of Record, yet 'tis neither a Foreſt or Chaſe till 'tis proclaimed by the Sheriff, That the King's Pleaſure may be known that it ſhould be ſo: Neither doth that Proclamation make it a Foreſt, but only a Chaſe; for 'tis not a Foreſt after all this is done, nor until the King hath appointed Officers for the ſame, as *Verderors*, *Foreſters*, *Regarders*, *Agiſtors*, and *Woodwards*.

8. And a Foreſt being thus made, and ſuch Officers appointed, there are certain proper Laws and Courts which are incident to the ſame, juſt as a *Court-Baron* is incident to a Manor, or a Court of Pie-powders to a Fair, (*viz.*) as for Inſtance, the Court of *Attachments* or *Woodmote*, the Court of *Swanimote*, and the Court of the *Lord Chief Juſtice in Eyre*, ſo that until the ſame hath ſuch Officers and Courts, the Place is but a *Chaſe* and not a Foreſt. *Hesket*, *fo.* 10. *Treherne*, *fo.* 5.

9. But it doth not appear either by Hiſtories or Records, when the *old Foreſts* in *England* were made, and as antient are the Foreſt-Laws, except ſuch which have been altered by *Charta de Foreſta*, and other ſubſequent Statutes. 4 *Inſt.* 319. *Ibid.* 293, 294.

10. 'Tis true, the Judges *in Paſcha*, 5 *Jac.* 1. reſolved, That 'tis not the Appellation of it by the Name of a *Foreſt* in Grants, Offices, and Conveyances, that makes it ſo in Law; but it muſt appear by Matter of Record, as by the Eyres of the Juſtices of Foreſts, Swanimotes, Officers of Foreſts, as Regarders, Agiſtors, Verderors, *&c.* 12 *Rep.* 22.

11. But this muſt be underſtood of the new Foreſts which were made by the Afforeſtation of *H.* 2. *R.* 1. and King *John*, and which were diſafforeſted again by *Ed.* 1. for no Records do men-

tion the beginning of the ancient Forests which were made before that Time.

What a Forest is.

12. A *Forest* is a certain *Territory of woody Grounds* and fruitful Pastures, privileged for wild Beasts and Fowls of Forest, Chase, and Warren, to rest and abide there in the safe Protection of the King, for his Delight and Pleasure; which Territory of Ground so privileged is meered and bounded with unremoveable Marks, Meers and Boundaries, either known by Matter of Record or by Prescription; and also repleniſhed with wild Beasts of Venery or Chase, and with great Coverts of Vert, for the Succour of the said Beasts there to abide; for the Preservation and Continuance of which said Place, together with the *Vert and Venison*, there are particular Officers, Laws, and Privileges belonging to the same, requisite for that purpose, and proper only to a Forest, and to no other Place.

13. And therefore a Forest doth chiefly consist of these four Things,

Of { *Vert*, *Venison*, } of { *Particular Laws*. *Proper Officers*. }

14. All which are appointed that the same may be the better preserved for a Place of Recreation for Kings and Princes.

But my Lord *Coke*, in 4 *Inst.* 289. tells us, That a Forest doth consist of eight Things, (*viz.*)

Of { *Soil*, *Covert*, *Laws*, *Courts*, } of { *Judges*. *Officers*. *Game*. *Bounds*. }

15. In

15. In the aforeſaid Deſcription of a Foreſt 'tis called a certain *Territory of Ground*, which word *Territory* is a Circuit of Ground, containing a Liberty within it ſelf; and tho' ſeveral Men have Land in it, yet the Territory lies open, tho' likewiſe there may be ſeveral Incloſures in it.

16. The Word in its proper Signification ſignifies all the Fields and Country lying within the Bounds and Liberty of a City, extended round about to certain Meers and Boundaries, and with no other Incloſure.

17. And becauſe a Foreſt doth lie open, and not incloſed, and is diſtinguiſhed only by *Meers* and *Boundaries*, therefore the word *Territory* is a proper Word to expreſs the ſame; and in the ſame Senſe the *French* do uſe this Word, *(viz.) Territoire d'une Ville*, that is, the Territory or whole Circuit of Land belonging to a City or Town.

18. 'Tis likewiſe ſaid, that a Foreſt is a *Territory* of *woody Grounds and fruitful Paſtures*, the one for the Shelter, and the other to feed the Deer, without which it cannot be a Foreſt; and therefore to deſtroy the *Coverts*, or to deſtroy the Woods, is to deſtroy the Foreſt it ſelf; and ſo 'tis to convert the Paſture into arable Lands.

19. It muſt alſo be *privileged for wild Beaſts and Fowls*, becauſe many other Places have Woods, Coverts, and fruitful Paſtures, yet are no Foreſts; ſo that 'tis this Privilege that diſtinguiſhes a Foreſt from thoſe Places.

20. But a Foreſt is not a privileged Place for all manner of wild Beaſts or Fowls, but only for Beaſts of *Foreſt*, *Chaſe*, and *Warren*, and no other, that is, for the *Hart*, the *Hind*, and the *Hare*, which are Beaſts of the *Foreſt*; the *Buck*, the *Doe*, the *Fox*, which are Beaſts of the *Chaſe*; the *Hare*, the *Cony*, the *Pheaſant*, and the *Partridge*, which are Beaſts and Fowls of *Warren*, and no other.

21. The Privilege which they have, is to reſt and abide there without Diſturbance; and the words (*In the ſafe Protection of the King*) are to ſhew by whom they are protected and privileged, (*viz.*) by the Royal Authority of the King, to reſt and abide there without the Hurt, Diſquiet, or Damage of any Perſon or Perſons whatſoever.

22. By the following Words, *viz.* (*For his Princely Delight and Pleaſure*); 'tis plain for what purpoſe the Beaſts are ſo protected; therefore 'tis not ſufferable for any other Perſon to Hunt or Hawk there without the King's Licence, or without the Licence of his Chief Juſtice in Eyre, or ſome other lawful Authority ſo to do.

23. And by the Words, *viz.* (*Which Territory of Ground*, &c. *is meered and bounded with unremoveable Marks, Meers and Boundaries*) is ſhewed by what Means the Foreſt is known from other Lands, for tho' it lies open and not incloſed with any Hedge, Ditch, Pale, or Stone-Wall, yet in Law 'tis as ſtrongly incloſed by thoſe Meets, Marks and Boundaries, as if it were with a brick Wall.

24. 'Tis farther ſaid, That a Foreſt *muſt be replenished with wild Beaſts of Venery or Chaſe*, for otherwiſe 'tis no Foreſt; and in ſuch caſe Men may fell their Woods which they have in the Foreſt, and deſtroy their Coverts, becauſe there are no Beaſts to take Shelter there, and may alſo convert their Paſture into Arable.

25. But if there are Beaſts of Venery or Chaſe in any Part of the Foreſt, the ſame remaineth ſtill, and then the Woods muſt neither be felled, nor the Paſtures plowed, without ſpecial Licence for that purpoſe.

26. And by the Words, *viz.* (*Great Coverts of Vert for the Succour of the wild Beaſts to have their Abode in*) is ſhewed the Neceſſity to preſerve thoſe Coverts; and even the Lord Chief Juſtice in Eyre

himself, cannot licence a Man to cut down his own Woods within the Forest, unless there is sufficient left unfelled to shelter the wild Beasts.

27. And these Coverts which Men have Licence to cut, the Springs thereof must be carefully preserved, that they may grow to be Coverts again; for tho' they may have Licence to fell their own Woods, they must not destroy them.

28. 'Tis farther shewed, what Coverts these must be, *viz.* (*Coverts of Vert,*) which word comprehends every Thing bearing green Leaves in the Forest.

29. And 'tis added, *viz.* (*For the Preservation of which said Place,* &c. *there are particular Laws, Privileges, and Officers,* &c.) which Words shew, That a Forest differs from all other Places, having particular Laws and Officers for the Government thereof; which Laws consist in three Things, *viz.* The Preservation of the Place, and of the *Vert*, which is the green Woods that are Coverts, and of the *Venison* which is every Beast of Forest and Chase; and there can be no Trespass done in the Forest, but it must be either to the Hurt of the Forest, or of the *Vert* or *Venison*, which last Word comprehends every Beast of Forest and Chase, and is a general Appellation for them all.

30. And these Laws of the Forest are called particular Laws, not because they relate to one Forest, and no more; for they are general to all Forests alike; but, because they are particular only, and proper to Forests, and not to any other Places.

31. 'Tis farther added in this Description, That *there are proper Officers belonging to the same*, by which the Jurisdiction of the Forest is set forth; for all Offences and Trespasses in a Forest must be tried before the Officers thereof.

32. The

32. The necessary Officers are these, (*viz.*) A Steward, Verderors, Foresters, Regarders, Agistors and Woodwards, and these hold the Courts of the Forest, for the due Execution of the said Laws.

The Difference between a Forest and a Chase.

33. A Forest differs from a Chase in three Things, (*viz.*) in particular Laws, in certain Officers, and in particular Courts which are incident to Forests, for the Execution of these Laws: And there are no particular Laws proper to a Chase alone; for all Offenders in a Chase are punishable by the Common Law, and not by the Forest-Law, or any other Law proper only, and peculiar to a Chase.

34. Neither are there any such Officers in a Chase as in a Forest, for there are neither *Verderors*, *Foresters*, *Regarders*, nor *Agistors*, but only *Keepers* and *Woodwards*.

35. Neither are there any Courts of *Attachments*, *Swanimote*, or *Justice-Seat* in a *Chase*; all which are held and kept in Forests; and those Officers which are called *Keepers* in a *Chase*, are called *Foresters* in a *Forest*.

36. Neither can Chases, which never were any Forests, have any *Purlieu*; and consequently the Case in *Dyer* 326, must be mistaken. 4 *Inst.* 303.

A Forest comprehends a Chase, a Park, and a Warren.

37. A Forest is in its Nature the highest Franchise of princely Pleasure, and the next to that is a Liberty of a *Free Chase*.

38. (A *Chase* is in one Degree the same Thing as a *Park*, only a Park is inclosed, and a Chase is always open.)

39. The next in Degree to a free Chase, is a Park, and next unto a Park is the Franchise of a free Warren; and therefore, because a Forest is the highest and greatest Franchise, being also a general and compound Word, it comprehends both a Chase, Park, and Warren; and for that Reason the Beasts of Chase, and the Beasts and Fowls of Warren, are privileged in a Forest, as well as the Beasts of Forest; and therefore, if any such Beasts or Fowls of Chase, Park or Warren, are hunted or killed in a Forest, 'tis a Trespass of the Forest, and to be punished by the Laws thereof, and by no other Law whatsoever.

Of the Prerogative of the King to make Forests when he pleaseth.

40. The King having a continual Care for the Preservation of the Realm, and for the Peace and Quiet of his Subjects, he had therefore, amongst many Privileges, this Prerogative, *viz.* To have his Places of Recreation wheresoever he would appoint: But this must be understood to be before the making *Charta de foresta.* 4 *Inst.* 300.

41. As by Law he may enter the Grounds of any of his Subjects, where Mines of Gold or Silver are found, so he might keep Wild Beasts and Game to himself in such privileged Places where he will appoint. *Plowd.* 318. *B.* 17 *Car. cap.* 16.

42. For Wild Beasts of Venery, and Beasts and Fowls of Chase and Warren, being Things of Excellency, are, for that Reason, more proper for the Delight and Recreation of a Prince; and therefore they belong to him. *Bracton, Lib.* 2. *cap.* 1.

43. And this may be the Reason why 'tis not lawful for any Man to make a Chase, Park or Warren in his own Freehold, or elsewhere, to pre-

serve

ſerve ſuch Beaſts without the King's Grant or Warrant ſo to do. *Br. Action ſur Stat.* 48.

44. The Puniſhment for making a Chaſe, Park or Warren, without ſuch Licence, is by *Quo Warranto*, and the Franchiſe may be ſeiſed into the King's Hands, *Br. Quo Warr.* 7. 6 *Ed.* 2 *Aſſiſ. pag.* 34. *Lib. Inſtr. Quo Warr.* 2. for ſuch Wild Beaſts do belong to the King.

45. This appears in *Bracton, Lib.* 2. *cap.* 24. *num. Habet enim Rex præ cæteris omnibus in regno ſuo de jure gentium, privilegia, quæ de jure naturali eſſe deberent inventoris, ſicut Theſaurum, Wreccum Maris, craſſum piſcem, Sturgionem, Wayvium, quæ in nullius bonis eſſe dicuntur: Habet etiam de jure gentium in manu ſua, quæ de jure naturali deberent eſſe communia, ſicut feras Beſtias, & aves non domeſticas, quæ deberent eſſe communia de jure naturali, & per apprehenſionem & captionem & occupationem propria, &c.*

46. And although men may kill ſuch Beaſts while they are wild and found out of any Foreſt, Chaſe, Park or Warren; yet no Man hath any Property in them until they have killed them; for during the Time of their Wildneſs, they are *nullius in bonis*; and they may properly, in ſuch Caſe, be ſaid to be *in manu Domini Regis*; and therefore he may prohibit any Man to kill or deſtroy them.

In what Places Foreſts ſhould be made.

47. *In Libro Rubro in Scaccario*, it appeareth, *Non in quibuſlibet locis eſt foreſta Domini Regis, ſed in nemoribus*, viz. *In locis ſylveſtribus*: So that Foreſts were always made in Woody Places, where there was great Store of Coverts.

48. And, in the ſame Book, 'tis ſaid, *In ſingulis Comitatibus foreſta Regis non eſt, ſed in nemoroſis, ubi ferarum latibula ſunt & uberiora paſturæ.* Here it

appears, that a Foreſt ſhould have fruitful Paſtures, as well as Coverts, for the Wild Beaſts.

49. And, in another Place in the ſame Book, *Numquid in ſingulis Comitatibus foreſta Regis eſt infra regnum? Non, ſed in ſaltuoſis locis*: And in another Place, *Foreſta eſt tuta ferarum manſio, non quarumlibet, ſed tantummodo ſylveſtrium.* By which it appeareth, That Foreſts were at firſt made for Beaſts of the Woods, and that thoſe are properly Beaſts of the Foreſt which frequent the Woods; and therefore 'tis neceſſary, that Foreſts ſhould be made where Woods are growing for the Covert of ſuch Beaſts.

50. In the firſt Article of *Charta de foreſta*, it likewiſe appeareth where Foreſts ſhould be made, *viz. Omnes foreſtæ quas Henricus avus noſter afforeſtavit, videantur per bonos & legales homines, Et ſi Boſcum aliquem alium quàm ſuum Dominii cum afforeſtaverit ad damnum illius cujus Boſcus ille fuerit, ſtatim deafforeſtetur.*

51. Here the Statute mentions the Woods of other Men; but the Meaning muſt be, that all the Lands and other Grounds which were before that Time afforeſted by *H* 2. ſhould now, as well as the Woods, be diſafforeſted by this Charter.

52. So likewiſe, in the 3d Article of the ſaid Charter, *viz. Omnes autem Boſci qui fuerunt afforeſtati per Regem Ricardum avunculum noſtrum, vel per Regem Johannem patrem noſtrum, uſque ad primam Coronationem noſtram, ſtatim diſafforeſtentur, niſi ſit Dominicus Boſcus noſter.*

53. From both which Places it may be inferred from the Word *Boſcus*, that ſeldom any Lands were afforeſted, but Woods or Woody Grounds.

54. And becauſe, in former Days, the Woody Countries not being inhabited, were full of Wild Beaſts, therefore the Word *Sylva*, which in *Latin*

is

is a Wood, was commonly taken for a Foreſt, and ſo was the Word *Saltus*; and in the *Saxon* and *Celtick* Languages, great and vaſt Woods are called *Falor*, *i. e.* Woods or Foreſts, becauſe Woods were then Foreſts.

Why it is called a Foreſt.

55. Though the Word *Sylva* is often taken and tranſlated for a Foreſt, and ſo is the Word *Saltus*, yet neither of them are proper Words for a Foreſt, but for a Wood. 'Tis true, they are taken for a Foreſt, becauſe 'tis a Place full of Woods; and therefore a good Foreſter is called, a good Wood-ward, and was antiently called *Saltuarius*, which ſhews from whence his Name is derived, though now he is called *Foreſtarius*.

56. But it doth not follow from thence, that every Wood is a Foreſt, though there are Deer and other Wild Beaſts there, unleſs the Place is privileged by the King for the Quiet and Protection of the Wild Beaſts there.

57. Such a Wood ſo privileged is called, by *Budæus*, *in 2 Lib. de Philologia*, *Sylva ſacroſancta*; and in another Place, *Saltus ſacroſanctus*: So that a Wood privileged for Wild Beaſts, and a Foreſt, are both the ſame Thing.

58. The ſame *Budæus* calls a Foreſt, *Saltuaria ſacroſancta*: For, ſpeaking of hunting, he ſaith, *In quibus ſaltibus ferarum greges ſacroſancti ſunt, legum regiarum ſanctionibus, quos aquarias ſaltuariaſque dicimus.*

59. And hereupon the *Latiniſts* have framed the Word *Foreſta*, which is compounded of *Fera & Statio*, *i. e.* a ſafe Abode for Wild Beaſts; And, in Imitation of the *Latiniſts*, we have made an *Engliſh* Word, Foreſt, which is compounded of *For* and *Reſt*, the Name being derived from the Nature

of the Place which is privileged by the King for the Rest and Abode of the Wild Beasts.

What Benefit the King hath by the Preservation of Forests.

60. If the Officers, who have the Charge of the Forest committed to them, are diligent in the discharge of their Offices, the King would have Plenty and Increase of Deer, as well for the Provision of Venison for his Table, as for his Recreation in hunting.

61. Besides, the great Woods and Timber, as well of his own as of his Subjects, growing in the Forests, would, by this means, be preserved; which otherwise would be cut down and destroy'd.

62. For the Negligence in putting the Forest Laws in Execution, hath not only been the great Decay and Destruction of the Deer almost in all the Forests of this Realm, but also the Destruction of the great Wood and Timber, the Want whereof, as well now as hereafter, will appear in the Navy.

63. Likewise, the Negligence of puting these Laws in Execution, hath induced a general Ignorance of them; so that they are not only grown out of Use in most Places, but into Contempt by the Inhabitants of the Forests.

64. I do not write this to have those Laws rigorously executed against Offenders; but to have them so executed, that the Forests may still be known to be Forests, and that the Game may be preserved for the King's Use: For otherwise it was much better to disafforest them all, and then the King will be discharged of those great Fees, which he yearly pays out of his Exchequer to the Officers of the Forests.

Who may make a Forest.

65. 'Tis a general Opinion amongst the Learned in the Law, That the King only, *de jure Gentium*, or, as they say, at Common Law, may make a Forest. *Bract. Lib. 2. cap. 24. Hesket, fo. 8. Fleta, fo. 5.*

66. So likewise 'tis a general Opinion, That no other Person whatsoever, but the King, or such who have Authority from him, can make a Forest.

Whether a Subject may have a Forest.

See *Appendix*, in Stat. 22 Ed. 4.

67. 'Tis likewise a common Opinion, that a Subject cannot be seised of a Forest, and that Franchise, which is a Forest in the Hands of the King, is but a Chase in the Hands of a Subject: The Reason is, because a Justice-Seat is incident to a Forest, and none can make a Justice in Eyre but the King. 2 *Bulst.* 295.

68. But this Opinion is not well grounded; for, by the Records of the Court of the Dutchy of *Lancaster*, it appeareth, That in the Reigns of *Ed.* 2. and *Ed.* 3. the Earl of *Lancaster* had a Forest in the Counties of *York* and *Lancaster*, and did execute the Forest-Laws there as largely as ever any King did before.

69. For it appeareth *in Inst. Lancastr. fo.* 64. in the 10th Year of *Ed.* 3. That the Earl of *Lancaster*, who was a Subject, was Lord and Owner of a Forest; and gave Licence unto another to make and inclose a Park within the Boundaries of that Forest; and to have and hold the Park so inclosed, with all such Venisons as the Grantee should put therein, to him and his Heirs for ever: And this was

adjudged to be a good Licence in a Claim made by the Grantee. By which it appeareth, That a Subject may be Owner of a Forest; and that it may be and remain a Forest still, though in the Hands of a Subject.

70. By the same Records it likewise appeareth, That the Earl of *Lancaster*, being Tenant in Tail of the Honour and Forest of *Lancaster*, did, by his Deed, grant unto *W. N.* Licence to make a Park within the said Forest, and afterwards the Earl died; and this Grant being not binding to his Heir, the Grantee compounded and paid a new Fine to the Heir, that he might suffer his Park to continue. *Itin. Lancastr. Anno* 10. *Ed.* 3. *fo.* 69.

71. *In* 26 *Assexum. placito* 60. King *H.* 3. being seised of the Honour of *Pickering*, to which a Forest was then appendant, did grant the said Honour, *cum pertinentiis suis*, unto *Edmund* Earl of *Lancaster*, and his Heirs; and it was adjudged, that by this Grant of the Honour, *cum pertinentiis*, the whole Royalty of the Forest did pass.

72. *In Hill.* 42. *Ed.* 3. *fo.* 2. it was held, That a Forest in the Hands of the King may be granted by him to a Subject, even by the Name of a Forest; and that the same shall be a Forest still in the Hands of the Grantee, being a Subject.

73. By the reciting Part of the Statute of 22 *Ed.* 4. *cap.* 7. which provides for those who had Woods in the Forests, that they might lawfully inclose such Woods after they were cut down, it appears, That the Statute relates as well to those who have Woods in the King's Forests, as to those who have Woods in the Forests of other Men, by express Words.

74. And the Statute of 27 *H.* 8. *cap.* 7. provides for the Reformation of several Disorders and Oppressions on the King's Subjects in *Wales*, by colour of the Forest-Laws; *viz.* Within such Forests

bogh

as

as were the Inheritance of the King, as in other Forests whereof Lords and other meaner Men were Owners.

75. By all which Cases and Statutes, it plainly appears, That a Subject may be Owner of a Forest.

76. And this is grounded upon the old Authorities, in *Bracton, Lib. 2 cap. 24.* where, writing of the Privileges of the King, and what Privileges he may grant, he hath these Words; *viz. Ea vero quæ dicuntur privilegia licèt pertineant ad Coronam, tamen à Corona separari possunt, et ad privatas personas transferri, sed de gratiâ ipsius Regis speciali.*

77. So that 'tis not to be doubted but that a Subject may have a Forest by the King's Grant under the Great Seal, as the Duke of *Norfolk* had formerly. The Lord *Abergavenny* had St. *Leonard's* Forest in *Sussex*; and the Duke of *Buckingham* had the Forests of *Brecknock-Hay* and *Caussellay*; and though they were in their Hands, being Subjects, yet they were Forests still, and they punished Offenders therein by the Forest-Laws.

78. And even at this time there are some Noblemen who have Forests by Grants from the King to them or to some of their Ancestors; as the Lord *North* hath the Forests of *Weybridge* and *Sapley* in Fee. *Dyer*, 169.

How a Forest may be granted by the King to a Subject.

79. Mr. *Trebenne*, *fo.* 5. and Mr. *Heskat*, *fo.* 7. tell us, That if the King is seised of a Forest, and by his Letters Patent, grants the same to a Subject, by the Name of a Forest, *Habendum sibi & hæredibus suis, cum omnibus incidentibus, appendiciis & pertinentiis*; that the Grantee, or his Heirs, shall have the same as a Forest by vertue of such Grant; and all Officers which belong to the Forest, must remain

remain as they were before, excepting only a Chief Juſtice in Eyre.

80. And ſuch Grantee may hold a Court of Attachments every forty Days; and likewiſe, a Court of Swanimote, in ſuch Manner as the Law appoints: But if he will hold a Court of Juſtice-Seat, to puniſh ſuch who are preſented in thoſe Courts aforeſaid, for Treſpaſſes done in the Foreſt, then he muſt procure a ſpecial Commiſſion from the King, under the Great Seal, directed to certain Perſons therein to be named, giving them Authority to hold Plea of all Treſpaſſes done in the Foreſt, and to hear and determine the ſame.

81. For though the Grantee hath the Place as a Foreſt, yet he cannot appoint a Juſtice in Eyre himſelf, unleſs the King, by ſpecial Words, had granted to him *Jura Regalia*; and then the Grantee may hold a Juſtice-Seat for that Foreſt, and appoint Juſtices to hear and determine Treſpaſſes done there, and puniſh Offenders for the ſame.

82. And 'tis not an unuſual Thing for the King to make ſuch Grants; for ſeveral Abbots and Biſhops had *Jura Regalia* in many things; as the Abbots of St. *Albans* and *Glaſtonbury*. *Lib. Intr. tit. Franchef. fo.* 358. *Secretum Domini, fo.* 78.

Where a Foreſt, granted by a King to a Subject, ſhall ſtill be a Chaſe.

83. It was the Opinion of the Lord Chief Juſtice *Thorp*, *Anno* 43 *Ed.* 3. That if the King purchaſeth a Manor unto which a Foreſt is regardant, and afterwards gives the ſaid Manor to another, *Simul cum libertatibus, ad illud ſpectantibus*, That, by ſuch Grant, the Foreſt doth not paſs; for, by the Purchaſe, all Royal Franchiſes and Liberties belonging

to

to the Manor, were annexed to the Crown. *Plowd.* 332.

84. But 'tis otherwise if he grant the Manor, *cum Libertate ad illud spectante tempore quo maneriam fuit in manibus feoffatoris*; so that by the Purchase, the Franchise Royal is extinguished, and cannot pass without special Words, which amount to a new Grant.

85. *Treberne, fo.* 6. and *Heskat, fo.* 7. are of Opinion, That where the King is seised of a Forest, and by his Letters Patent grants the same to a Subject, by the Name of a *Forest, cum omnibus suis Parcellis*, yet the same is but a *Chase* in the Hands of the Grantee; for he cannot hold any *Court of Attachment* or *Swanimote*; neither can he make *Verderors, Regarders*, and other Officers, and without such Courts and Officers it cannot be a Forest. 42 *Ed.* 3. *fo.* 2. *Placito* 8. *Kellewey* 14. 2 *Bulst.* 298.

86. But if the King had granted, That he should have made a *Justice-Seat*, in such Case the Grantee would have a Forest. 2 *Bulst.* 297. 4 *Inst.* 314.

87. So that by the Book-Case 42 *Ed.* 3. as aforesaid, it appeareth, That a Forest which is such in the Hands of the King, may be granted by the Name of a *Forest* to a Subject, and yet shall be but a *Chase* in the Hands of the Grantee.

88. In *Dyer, fo.* 169. there is this Case, (*viz.*) *H.* 8. by Letters Patent, in the 33 Year of his Reign, granted to Sir *Richard Cromwell, forestam suas de Weybridge & Sapley in Com. Huntingdon. habendum sibi cum suis partibus, membris, parcellis & pertinentiis universis*; and this was for the Term of 80 Years, paying for the same yearly to the King, 6 *l.* 13 *s.* 4 *d.* with this Clause, (*viz.*) *Et prædict' Richardus Cromwell, Executores & Assignat. sui custodient, habebunt & manutenebunt in forestis prædict' de tempore in tempus durante termino prædicto Centum*

Damas

Damas & eaſdem ſeu alias conſimiles in numero in prædictis foreſtis in fine termini prædict. dimittent præfat. Regi, hæredibus & ſucceſſoribus ſuis, without any other Reſervation of the Game.

89. The Lord *North*, who had afterwards the Inheritance of the ſaid Foreſts by a Grant from the King, gave out Warrants, and did take the Game there; and it was the Opinion of moſt part of the Juſtices, and the Serjeants of both Houſes, and the King's Attorney, that he could not do it, becauſe all the Game were included in the word *Foreſt*; and the hundred Deer, or any of them, were not reſerved to be killed; for then it was impoſſible for the Leſſee to perform his Covenant, but they were reſerved for a Stock and Breed of more in the Foreſt.

90. It was likewiſe held, That Sir *Richard Cromwell* the Grantee might have the ſame as a *Foreſt* by the Words of that Grant; and that he might hold a Court of Attachments and Swanimote, but no Juſtice-Seat, without a ſpecial Commiſſion for that purpoſe granted by the King; ſo that if a Treſpaſs is committed in ſuch Foreſt, the Grantee may puniſh it according to the Laws of the Foreſt, which he could not do if it was a Chaſe; for then he muſt bring an Action of Treſpaſs at Common Law, *Quare Chaſeam ſuam fregit*, or elſe indict the Offender; ſo that it plainly appears, That a Foreſt granted by the King to a Subject, by the Name of a Foreſt, ſhall remain and continue a Foreſt in the Hands of the Grantee.

91. *The laſt Prince* Henry *had a Foreſt granted to him with a Power alſo to make a Juſtice in Eyre, and alſo Licence to keep Courts; and the Duke of* Lancaſter *likewiſe had ſuch a Grant with a ſpecial Commiſſion to make a Juſtice in Eyre for keeping Courts.* 2 Buſſt. 295.

92. From the aforesaid Case in *Dyer* it may be inferred, That if the King had granted the said Forests of *Weybridge* and *Sapley* unto Sir *Rich. Cromwell*, *habendam Richardo Cromwell*, *&c.* leaving out the following Words, *Cum suis partibus, membris, parcellis & pertinentiis universis*; and tho' the Grant had contained all the other Words, and likewise the Covenant for maintaining the Deer; yet the Grantee should have those Forests but as *Chases*; for nothing is included in the Grant by the word *Forest*, but the Deer and Game.

93. Therefore, where the King is seised in Fee of the Royal Franchise of a *Forest*, and grants the same to a Subject by the Name of a *Forest*; yet if there are no Words which enable him to keep a Court of Attachments and Swanimote, he shall have it only as a free Chase, and not otherwise; so that without Words in the Grant to authorize him to keep such Courts which are incident to a Forest, the same is but a free Chase.

94. *King* Ric. 2. *granted to* Thomas *Duke of* Gloucester, *the Castle of* St. Briowell *and the Forest of* Dean, *in special Tail*; *and it was afterwards enacted by the Parliament*, *That the Duke should hold the said Forest as a Forest*, *with Power to constitute such Justices and Officers*, *&c. as are incident and belonging to a Forest*. 4 Co. 115.

95. And according to the Cases before mentioned, all the Judges of *England* met together in *Serjeant's Inn*, where, amongst other Things it was resolved, That a *Forest* may be in the Hands of a Subject, and be used as a Forest, if the King gives Authority by express Words for the Administration of Justice there, and for his Justices to come there; and if the Grantee had a Commission to use and have Officers in the Forest, then it shall continue a Forest in the Hands of a Subject; otherwise, without such Liberties, it is but a Chase in the

Hands

Hands of a common Person; and *Popham* said, That he had seen such Liberties of Forest granted in that manner. 2 Co. 155.

96. But in all the Cases where it is said a Subject may have a Forest, as 2 *Ed.* 2. Tit. *Trespass*, *fo.* 9. in the Time of *Ed.* 1. Tit. *Trespass*, *Pinnel.* 239. *Dyer* 72, *&c.* it must be intended, if he hath Power to have *Swanimotes* and Justices in Eyre, and Foresters appendant to his Forest.

Which are Beasts of Forest, and the Difference between them and Beasts of Chase.

97. The Book called *Antiquitas Britanniæ*, *fo.* 43. which was written before the Conquest, mentions five wild Beasts of Venery, which are called Beasts of the Forest, (*viz.*) The *Hart*, the *Hind*, the *Hare*, the *Boar*, and the *Wolf*; and accordingly the ancient Book of *St. Albans*, *fo.* 30. concerning *hunting* and *hawking*, written long since by a Monk, mentions those five Beasts to be Beasts of Forest, and no other; and with him agrees *Holinshed*, in his Description of *England* 206; and old Sir *Tristram*, in his worthy Treatise of Hunting, saith the same Thing: and with them agreeth *Budæus*, in his second Book *De Philologia*, that those five *semper forestæ & veneris habentur Bestiæ*; and so likewise saith *Fleetwood*, *fo.* 9. and Mr. *Hesket*, *fo.* 20. tells us, those five are properly called Beasts of Forest or Beasts of Venery.

98. As for *Wolves* there are none now in *England*, but formerly there were many here; and all the ancient Woodmen and Foresters did account them Beasts of Forest, and the Fox a Beast of Chase, because Kings and Princes took a Delight in hunting them; and therefore, if they were killed by any other Person without Leave, and within the Boundaries of the Forest, it was a Breach

of

of the King's Royal Franchise, and the Offender was to be punished.

99. But the *Wolves* were almost destroyed by King *Edgar*, so that when *Canutus* began to reign, no care was taken to preserve those which were left, because they were dangerous and hurtful Beasts; and therefore in his Forest-Laws, *Canon* 27, they were not accounted Beasts of Forest; nor Foxes, Beasts of Chase, (*viz.*) *Vulpes & Lupi nec foreſtæ nec Veneris habentur, & proinde eorum interfectio nulli emendationi ſubjacet, ſi tamen infra limites occiduntur fractio ſit Regiæ Chaſeæ & mitius emendatur*; so that tho' *Canutus* did not account the one a Beast of the *Forest*, nor the other a Beast of *Chase*, yet they were privileged in the Forest, and were not to be hurt there.

100. The Difference between Beasts of Forest and Beasts of Chase, is, That Beasts of Forest are *Sylveſtres tantum*, and usually frequenting the Coverts, and the Beasts of Chase are *Campeſtres tantum*.

101. If any white Tawer live in a Forest, he shall be removed and pay a Fine, for they are the common Dressers of Skins of stolen Deer. *Iter. Law. fo.* 7.

Foreſter.

See { *Bail*, 5, 7, 13.
Charge in Chief Juſtice, 24, 25, 26, 27, 78, 79.
Hunting, 41.
Offender, 2, 3.
Preſentment, 1.
Ranger, 4.
Regarder, 38.
Scotale, 3.
Veniſon, 6.
Warrants, 2.
Woods, 5.
Appendix, Charta Canuti, 4, 8.
Appendix, Charta Foreſtæ, 7.

1. A Foreſter is an Officer ſworn to preſerve the *Vert* and *Veniſon* in the Foreſt, and to attend upon the wild Beaſts within his Bailiwick; and to attach Offenders there, either in *Vert* or *Veniſon*, and to preſent the ſame at the Courts of the Foreſt, that they may be puniſhed according to the Quantity and Quality of their Offences and Treſpaſſes.

The Oath.

2. ſſ. *You ſhall truly execute the Office of a Foreſter, or Keeper of the King's wild Beaſts, in the Walk called* P. *within the Foreſt of* W. *you ſhall be of good Behaviour your ſelf towards his Majeſty's wild Beaſts, and the Vert and Veniſon of the ſame Foreſt; you ſhall not conceal the Offence of any other Perſon, either in Vert or Veniſon, that ſhall be done within your Charge, but as well the ſame Offence, as alſo all Attachments you ſhall preſent at the next Court of Attachments or Swanimote, which ſhall firſt happen to be*

holden for the ſame Foreſt; and you ſhall to the uttermoſt of your Power maintain and keep the Aſſiſe of the Foreſt, and in all Things the King's Right defend concerning the ſame, ſo long as you ſhall be Keeper there:

So help you God.

3. He is made by *Letters Patent* under the Great Seal, and ſome of them have their Offices in *Fee*, paying to the King a Fee-Farm Rent for the ſame, as it appeareth by the Aſſiſes of *Pickering* and *Lancaſter*; and ſuch Office in Fee may be forfeited, and this was the Caſe of *Roger Bigot*, Earl of *Norfolk*, in the Foreſt of *Pickering*; and a Man may be a Foreſter in Fee *in jure Uxoris* 11 *Ed.* 3.

4. Some of them have their Office *for Life*, and ſome of them but only *durante beneplacito*, and in like manner it is of all other Foreſters that are not Foreſters to the King, and thoſe who are Servants to ſuch Officers are not properly called Foreſters, but *Walkers* or *Under-Keepers*.

5. Theſe Foreſters muſt not *walk* or make any *Attachments* in the Foreſt before they are *ſworn*, if they do 'tis *contra Aſſiſam foreſtæ*, as appears by the *Iters* of *Lancaſter*, *fo.* 7. and by the *Woodſtock Aſſiſes* in the Reign of *H.* 2. where the Words are, *nec aliquis aliquem attachiet niſi ſit foreſtarius juratus.*

6. His Office conſiſts principally in theſe four Things,

To { *Preſerve.* / *Watch.* / *Attach.* / *Preſent.* }

7. (1.) He muſt preſerve the *Vert* and *Veniſon*, without which it cannot be a Foreſt; therefore he muſt be very careful to preſerve the Coverts where the wild Beaſts frequent, (*viz.*) Such which are

wild Beasts of Venery; and he must not destroy any such Beasts without good Warrant so to do; if he doth, 'tis a *Forfeiture* of his Office.

8. He must likewise take care that the Deer may have Food in the Winter; and for that purpose, by the *Assises* of *Pickering*, *fo.* 19. 'tis provided, That he may lop Trees in another Man's Land for *Browse*.

9. He must also be very diligent in looking after the Deer in the *Fence-Month*, and to preserve the young *Fawns* for the Increase of the Game, according to the *Assises* of the Forest.

10. He cannot give a Licence to any one to *hawk* or *hunt* in the Forest; for if he doth, both he, and all those who hawk or hunt there by his Warrant, are Trespassers, and punishable for the same by the Laws of the Forest.

11. *In long quinto*, *Ed.* 4. *fo.* 26. *B.* and also in *Trin.* 5 *Ed.* 4. *fo.* 5. *Placito* 64. it appeareth, That if Deer in a *Park* are destroyed by the Negligence of the *Keeper*, 'tis a *Forfeiture* of his Office; the Law is the same in case of a *Forester*.

12. Neither can he hunt there himself, or kill any Deer in the Forest without a lawful Warrant, for if he doth, he forfeiteth his Office; for he hath an Authority to preserve, and not to destroy, and therefore the Misuser or Abuser of his Authority will incur a Forfeiture.

13. (2.) Another Part of his Office is to *Watch* the *Vert* and *Venison* in the Forest, that it may not be destroyed; for as a Forester himself may not kill any wild Beasts of the Forest without good Warrant, nor cut down or destroy the *Vert* or *Venison*, so he must not suffer any other Person to do any manner of Hurt or Trespass to either; for it appeareth by the Laws of *Canutus*, *Canon* 2. That Foresters were at first appointed, *ad sustipiendum*

endum curam & onus tam de viridi quàm de Venatione.

14. (3.) Another Part of his Office is to *attach* Offenders or Treſpaſſers in the Foreſt; for as he is to preſerve the *Vert* and *Veniſon*, and to watch and attend the ſame, ſo he muſt *attach* all ſuch Offenders and Treſpaſſers as he ſhall find in the Foreſt, that they may be puniſhed as the Laws of the Foreſt direct, but he muſt not do it before he is ſworn. *Itin. Lancaſtr. fo.* 7.

15. And therefore, if he find any Man in the Foreſt, either with Bow and Arrows, or with *Greyhounds*, intending to offend there, he may arreſt and impriſon him as if he had actually done the Fact, but he cannot arreſt the Body of ſuch Offender, unleſs he is taken *with the Manner*, That is Dog, Draw, Stable-ſtand, Back bearing, Bloody-hand. 4 *Inſt.* 294.

16. If ſuch Offender fly, the Foreſter may purſue him with *freſh Suit*, and within his View *out of the Foreſt*, and may attach him there; but this is not juſtifiable, unleſs upon ſuch a *freſh Purſuit*, and upon extream and forcible Means.

17. So that he is bound as well by his Oath as by his Office to apprehend the Offender's Treſpaſſing in his Bailiwick, if he can by any means; and this upon the Peril of forfeiting his Office.

18. For if he is negligent in apprehending, or willingly ſuffers them to kill or deſtroy the Game, 'tis a Forfeiture of his Office; this appears *in long quinto* of *Ed.* 4. *fo.* [illegible] and *Trin.* 5 *Ed.* 4. *fo.* 5. *Placito* 64. before mentioned, and by the *Aſſiſes and Cuſtoms of the Foreſt*. Anno 6 *Ed.* 1. *Art.* 11. not only the Foreſters, but all other Perſons dwelling in the Foreſt muſt do what they can to apprehend ſuch Treſpaſſers and Offenders; the Words are, (*viz.*) *Si quis viderit aliquos Malefactores infra*

metas foreſtæ aliquam feram capere, vel aſportare, debet illos capere ſecundùm poſſe ſuum.

19. But as it hath been already ſaid, neither a Foreſter, or any other Perſon may apprehend an Offender, being without the Limits and Bounds of the Foreſt, unleſs he followed him out of the ſame, by a *freſh Purſuit*, always within his View; for in ſuch Caſe he may apprehend him out of the Limits, but he may neither wound, beat, or kill him there, as in ſome Caſes he may, if within the Foreſt, by vertue of the Statute 21 *Ed.* 1. and the Reaſon is, becauſe, whilſt the Offenders are within the Foreſt, the Officer hath a ſufficient Authority, by vertue of his Office, to arreſt them, that they might give Satisfaction to the King for their Offences.

20. So that in this Caſe the Authority of a Foreſter is like the Authority of a Sheriff, who having a Warrant to apprehend a Man in his County, and he flieth into another, in ſuch Caſe the Sheriff may freſhly purſue him within his View, and arreſt him in that other County; but he muſt not aſſault or beat him for flying, or becauſe he was not arreſted before in the firſt County. *Paſch.* 2 *Ed.* 4. *fo.* 6. *Placito* 74. 13 *Ed.* 4 *fo.* 8 *&* 9. *Placito* 4.

21. And a Foreſter or Keeper of the King's Foreſt, may do the like, ſo as he follow and freſhly purſue the Offender within his View, as aforeſaid, or hath a ſpecial Warrant and Authority from the Lord Chief Juſtice in Eyre, to arreſt him whereſoever he ſhall be found.

22. And this may be inferred from the 10th *Artic. Aſſiſæ foreſtæ, Anno* 6 *Ed.* 1. (*viz.*) *Si quis ceperit feram ſine Warranto in Foreſta, Corpus ſuum arreſtetur ubicunque inveniatur infra metas foreſtæ*; therefore the Foreſter may not arreſt him *without* the Bounds, unleſs he is followed by a *freſh Purſuit* within the *View*, as aforeſaid.

23.

23. (4) Another Part of the Office of a Foreſter, is to preſent; that is, He muſt not conceal any manner of Offence in the Foreſt, either in the Vert or Veniſon, nor any Attachments he hath made for any Offence or Treſpaſs; but muſt preſent the ſame before the Verderors at the Forty-Days-Court, or at the Court of Swanimote, according to the Aſſiſes and Laws of the Foreſt, that the Vert and Veniſon may be the better preſerved, and the Offenders, in ſuch Caſes, puniſhed.

24. It may not be improper in the next place, to ſhew how Foreſters ought to behave themſelves towards the Inhabitants of the Foreſt, without any manner of Extortion and Oppreſſion; for before the Statute *de Charta Foreſtæ* was made, it was a general Complaint, That Officers of the Foreſt did very much oppreſs thoſe People who dwelt therein, or who had Lands adjoining; and theſe Oppreſſions were Two-fold, *viz.* by Extortions, and by a multitude of Officers, by whom the ſame were exacted.

25. Now as the Miſchiefs were Two fold, ſo were the Remedies, *viz.* The firſt is a general Prohibition for avoiding all manner of Extortion by any Officer of the Foreſt, *viz. in Charta de Foreſta, cap.* 7 *Nullus foreſtarius vel Bedellus de cætero faciat ſcotallas, vel colligat herbas, vel avenam, vel bladum aliquod, vel agnos, vel porcellos, nec aliquam Collectam faciat, niſi per viſum & ſacramentum duodecim Regardatorum, &c.*

26. The ſecond Branch is likewiſe a general Prohibition to avoid all manner of ſurcharging the Foreſt, with too many Foreſters and Walkers, and other Under-Officers: So that there ſhould be no more than what are ſufficient to look after the Wild Beaſts, and by diminiſhing the Number of theſe Officers, their Extortions, of conſequence, would be diminiſhed: The Words are, *viz. Tot*

foreſtariis ponantur ad foreſtas cuſtodiendum quæ ad illas cuſtodiend' rationabiliter viderint ſufficere.

27. Now concerning the firſt Prohibition of the Statute which is for avoiding Extortion, 'tis to be conſidered, that there are ſeven Things forbidden in this Branch, wherein Extortions were in former Days committed by theſe Officers, *viz.*

In gathering of { *Scotale.* / *Hay.* / *Oats.* / Other *Corn.* / *Lamb.* / *Pigs.* }

Or any manner of *Gathering* whatſoever.

28. (1) A *Scotale* is where any Officer of the Foreſt keeps an Alehouſe there, and, by colour of his Office, cauſeth Men to come thither to ſpend their Money, for fear of his Diſpleaſure. This is an Offence to be inquired at the Swanimote; and at the general Seſſions of the Foreſt, *per duodecim juratores*; and if ſuch a Foreſter be attainted of this offence, he is to be puniſhed and put out of his Office.

29. The like Law if any Foreſter or other Officer of the Foreſt keeps any Game, or ſells any Ale at a certain Day, and by colour of his Office cauſeth People to ſpend their Money there, this is a *Scotale.*

30. But if ſuch Foreſter or other Officer is robbed, or his Houſe or Buildings are burnt by Misfortune, ſo that he is reduced to Poverty, and the People come and drink at his Houſe, and give him Money in Charity; this is no *Scotale* nor Extortion, becauſe *Scotale* is Extortion *colore Officii*, and not *virtute Officii*; for what he doth *virtute Officii*, is not Extortion.

31. The

31. The Words, *Nullus de cætero faciat ſcotallas, &c. Niſi per viſum & ſacramentum duodecim regardatorum quando faciunt Regardum*, do imply, That ſome ſort of Scotales are lawful, *viz.* Such which had a lawful beginning; and thoſe muſt be found and preſented by the View of the Regarders, upon their Oaths, when they make their Regard, that they had a lawful Beginning, either by Tenure, Grant, or Preſcription, ſo that it may appear that it was lawfully done, by good Right and Title, and not wrongfully exacted of the People, *colore Officii*.

32. So if a Foreſter or any other Officer of the Foreſt, by colour of his Office, doth oppreſs thoſe who have any Right of Common there, by compelling them in a clandeſtine Manner, to give him Hay, Oats, or any other Corn, or Lambs, or Pigs; or make any manner of Collection for Money or other things, this is Extortion, and 'tis now prohibited by that Statute to be uſed for the Time to come, for the Words are, *de cætero*, that is, from henceforth, *viz.* from the making the Statute, ſuch Things ſhall not be uſed.

33. But though the collecting Hay, Oats, Corn, Lambs and Pigs, or any thing whatſoever, is prohibited by the Statute where a Man hath no good Right or Title to the ſame; yet, in ſome Caſes, 'tis lawful, *viz.* If ſuch collecting commenced by good and lawful Title, which may be by theſe three Ways or Means.

1. *Tenure.*
2. *Grant.*
3. *Preſcription.*

34. Firſt, by Tenure, as where a Man holdeth Land in the King's Foreſt, to pay unto a Foreſter every Year, at his Scotale, 5*s.* or one Sheep or

Lamb; this is not Extortion, for 'tis not paid, *colore Officii*, without any Right or Title.

35. So 'tis if one holds Land of another paying a certain Rent, and alſo paying to the Foreſter a certain Quantity of Oats and Corn: This is not Extortion.

36. So likewiſe, if a Man, by Bargain and Sale inrolled, intail his Land to find or give unto the Foreſters a certain Collection every Year: In this Caſe, if the Donee will not pay or deliver the Collection, the Foreſters have no Remedy in Law to compel him, but the King may; for he, in reſpect of the Right he hath in the Foreſt, may cauſe the Donee to be indicted, and the Donor likewiſe may compel the Payment by Diſtreſs; and if the Donee ſhould pay it to the Donor, and not the Foreſters, according to the Tenure, yet the Donee ſhall not be diſcharged by that Payment, but that the Donor may diſtrain him a-new for his Service not done.

37. (2) The Second is by Grant, as if one, dwelling in the Foreſt, grants unto the King a certain Collection or Profit for his Foreſters to be received by them Yearly: In this Caſe they may lawfully collect the ſame.

38. So likewiſe, if one grant to an Officer in the Foreſt, any ſuch Collection, Profit or other thing *in Suſtentationem Officii*: This is a good Grant, and the Officers may lawfully collect it.

39. Therefore, in theſe Caſes, Firſt, as to the Donee, Though the Foreſters have no Remedy againſt him, yet the King may compel him by Information at his Suit, before the Juſtices of the Foreſt, by a *Datum eſt curiæ intelligi*, That the Donee will not pay ſuch a Collection according to his Grant; and, in the other Caſe, he ſhall be compelled to perform it by an Action of Covenant brought againſt him by the Donor.

40.

40. (3) The Third way of lawfully collecting is, by Preſcription, and that is only where there hath been a Foreſt and Officers Time out of Memory; for to alledge, that the Foreſt was made after the Limitation of the Writ of Right, doth avoid ſuch Preſcription.

41. A Foreſter in Fee may preſcribe in himſelf and his Anceſtors, to have Three Half-pence every Day throughout the whole Year, *pro victu ſuo*; and according to the Opinion of Mr. *Heſket*, *fo.* 30. he may lawfully collect the ſame.

42. The Law is the ſame in all caſes of Preſcription, where the ſame is lawful; and therefore a Foreſter in Fee may preſcribe to have all the Wind-fall Wood and dead Wood in the Foreſt, or throughout his Bailiwick, and all the Browſe-Wood felled in the Winter for the Deer; and to have the Humbles, or one or both Shoulders of every Deer killed in his Baliwick, and likewiſe the Skin; and all theſe are good Preſcriptions in Law.

43. Before the making the Statute of *Charta de Foreſta*, the Foreſters and all others who had Baliwicks in Fee, did appoint more Walkers and Under-keepers than were needful; ſo that the People were oppreſſed by the Extortions of a Multitude of unneceſſary Officers, which were exacted by them in the Foreſt for the Maintenance of their Families, they having no other Wages but ſuch which they got by Extortion by colour of their Office.

44. Therefore it was provided by that Statute before-ſaid, *viz. Quod tot foreſtarii ponantur ad foreſtas cuſtodiendum quot ad illas cuſtodiendum rationabiliter viderint ſufficere*; that is, No more than the Regarders ſhall think convenient when they make their Regard; for if they find more than are neceſſary, or more than have been accuſtomed in antient Times, then, upon their Preſentment thereof, before

before the Justices of the Forest, they shall be removed, and the Offenders, in this behalf, shall be punished.

45. This appears *in Ordinatione foreſtæ*, made in 34 Ed. 1. *cap.* 3. *viz. Et ſi ſuperoneratio foreſtariorum aut aliorum qui ſe gerant ut miniſtri foreſtæ inveniatur, amoveantur hujuſmodi ſuperoneratores, & imprisonentur ſecundùm diſcretionem Juſticiarii foreſtæ vel ejus Locumtenentis, necnon & illi, per quos poſiti fuerant, ad voluntatem noſtram ſimiliter puniantur; & ad quodlibet Swanimotum inquiratur de ſuperoneratione foreſtariorum & aliorum miniſtrorum foreſtæ, & de eorum oppreſſionibus populo noſtro, & fiant inde emendæ & punitiones. ſicut ſuperius expreſſum, &c.*

46 By this Law, it appeareth likewiſe, That the Manner of surcharging the Foreſt is to be inquired at the Court of Swanimote; and then, if any ſuch is found, 'tis to be certified to the Juſtices of the Foreſt, and they are to remove the Surchargers.

47. It ſeems, that by the Words aforeſaid, *viz. Quòd ad illas cuſtodiendum rationabiliter viderint ſufficere*, That the Number of Foreſters and other Officers of the Foreſt, is to be eſtabliſhed by the Diſcretion and Oath of the Regarders; and the Words *viderint ſufficere* ſeem to import, That it muſt be according to the Quantity of the Ground of the Foreſt; for if the Foreſters have divers Bailiwicks and Walks, there ought to be one Foreſter or more in every Walk and Bailiwick. This is proved in *cap.* 10. *de capitulis attachiamentorum, viz. Quòd foreſtarii manè ſurgant & in Ballivam eant & ibi moram faciant uſque ad horam nonam & tunc eant ad prandium: Et citò poſt prandium redeant in Ballivam ſuam, viz. In partes illas ubi non fuerant ante prandium, & ibi eant audientes, & inſidiantes, ne quis in eâ malum faciat, uſque ad Veſperum: Et ſic faciant ſingulis diebus.*

48. Every

48. Every Forester is bound to appear at the Justice Seat, and when he is first called, he ought to deliver his Horn upon his Knees to the Chief Justice in Eyre, which is then delivered to the Marshal, and he pays the Fine of 6 *s.* and 8 *d.* before 'tis redelivered. *Jones*, 266.

49. The Office of a Riding-Forester is to lead the King in his hunting. *Ibid.*

50. It has been observed before, that he is constituted by Letters Patent; but if it be, that he shall have *Officium custodis domus vocat.* the *New-Lodge*, &c. *alias*, *Dict. Officium unius forestariorum Domini Regis in foresta de Windsor.* This is void as to the Walk, for it doth not say of what Place in the Forest; so that 'tis uncertain, and therefore void. *Jones*, 281.

51. If he claim the Office, and no Fee for the Execution of it, he is removeable at Pleasure; and though the Words *Una cum Vadiis & feodis eidem spectan. &c.* are in most Patents; yet he must averr some Fees certain in his Claim, or 'tis not Good, for he shall have no more allowed than is claimed.

For.

1. THis is the Third Beast of Chase, and there is very little Variety in the Terms of Foxes: 'Tis called,

The First Year, a Cub.
The Second Year, a Fox.

And so afterwards they are still called Foxes, without any other Distinction more than an Old Fox, and also a Litter of Cubs.

2. His

2. His Seaſon of Hunting begins at *Chriſtmas*, and laſteth till *Lady-day*.

The Terms are,

ſſ. A Brace or Leaſh of Foxes.
The Fox is Caſed.
Unkennel the Fox.
A Fox backeth.
A Fox goeth to clicketing.
The Dung of a Fox is called Syants.
The treading is called, The Footing.
His Tail is called his Buſh, or Holy-Water-Sprinkle.

Hampton-Court Foreſt.

1. THe neweſt Foreſt in *England*, is that of *Hampton-Court*, which was made by Act of Parliament, *Anno* 31. *H.* 8. *cap.* 5. 4. *Inſt.* 301.

2. King *H.* 8. having made *Hampton-Court* a moſt beautiful and ſumptuous Manor, and very convenient for a King, with Princely Parks, Gardens, Orchards, and other Things of Pleaſure, requiſite for his Royal Perſon; He limited a certain Territory of Ground, lying within the Precincts of *Eaſt-Mulſey*, *Weſt-Mulſey*, *Walton* and *Eſher*, contiguous to the ſaid Manor, to be a Foreſt; and cauſed the ſame to be meered and bounded with certain Boundaries; and appointed it for the Increaſe and Paſture of Wild Beaſts of Venery and Chaſe, and alſo for Beaſts and Fowls of Warren, and made it a Foreſt by the ſaid Act; which enacts, That the ſaid Foreſt ſhould have all ſuch Laws and Officers neceſſary for the Puniſhment of Offenders in the ſame, as all other Foreſts in the Realm had, and

and uſed heretofore: So that hereby you may ſee, a Foreſt may be made by Act of Parliament.

3. After the King had made it a Foreſt, as aforeſaid, he, by the ſame Act, made the Manor of *Hampton-Court* an Honour, and gave it the Name and Title of, *The Honour of Hampton-Court.*

4. And becauſe that King had afforeſted the Lands of ſeveral Men to their Prejudice, he covenanted with the Owners of ſuch Lands, to allow them certain Privileges in Recompence thereof; and alſo, That they might fell their Woods in the Precincts of that Foreſt, without Leave from him or any of his Officers; and that they might make great Fences and Hedges about their Corn, to keep it from the Deer.

Hare.

1. THE Hare is a Beaſt of Foreſt, and alſo of Warren. *Co. Lit.* 233.

2. And if a Man hunt and kill a Hare in the Foreſt, the Foreſter may apprehend him, becauſe 'tis a Treſpaſs in the Veniſon in the King's Foreſt: For Proof whereof, it appeareth in *the Aſſiſes of the Foreſt of Pickering, fo.* 13. That two Men were indicted, *viz.* one *Bulmer*, for ſtriking a Hare in her Form; and another Man, for taking a Hare in the Foreſt: One of them was committed and fined for the ſaid Offence, and was bound to his good Behaviour in the Foreſt; and the other was outlawed. So that Hares are Veniſon and Beaſts of the Foreſt.

3. Before the making of *Charta de Foreſta*, he who killed any Wild Beaſts in the Foreſt, was not puniſhable by any certain Law, but at the Will of the King; and therefore he might have inflicted the

the Loſs of an Arm, or even of Life, on ſuch Offenders: But in the ſaid Charter, *Artic.* 10. 'tis enacted, That *Nullus de cætero amittat Vitam vel membra, pro Venatione noſtra, &c.* No Man, from henceforth, ſhall loſe his Life or Member, *Pro Venatione noſtrâ*, for killing Veniſon, that is, for killing any Beaſts of Foreſt or Chaſe.

4. A Hare is called, by the o'd Foreſters, the King of all Beaſts of Venery; but there is little Variety of Terms concerning this Beaſt, only 'tis called,

The Firſt Year, a Leveret.
The Second Year, a Hare.
The Third Year, a great Hare.

5. The Seaſon for hunting the Hare, beginneth at *Michaelmas*, and laſteth till Midſummer.

6. The Terms of Hunting, and other Terms, are,

A Brace or Leaſh of Hares.
A Hare is ſeated or formed.
The Hare is caſed.
Start the Hare.
A Hare beareth or tappeth.
A Hare goes to Buck.
The Tail is called a *Scut*.

7. The Dung of the Hare is called Crottels, and the Footing hath divers Appellations; for when ſhe is in the plain Fields, ſhe *fareth*; when ſhe turns to deceive the Huntſmen, ſhe *doubleth*; when ſhe runs in the Highways, where her Footing may be perceived, ſhe *pricketh*, and in the Snow 'tis *tracking*.

8. By the Statute of 14 & 15. *H.* 8. *cap.* 10. tracing, deſtroying and killing a Hare in the Snow, the

the Forfeiture is 6 *s.* 8 *d.* for each Hare: This is inquirable in Seſſions and Leets, and the Fine goes to the King.

9. Any Perſon, not qualified, and being convicted by his own Confeſſion, or the Oath of two Witneſſes, before two Juſtices, of killing a *Hare*, he forfeits 20 *s.* to the Uſe of the Poor of the Pariſh where the Offence was committed, or where he was taken; if he cannot pay it, he muſt be committed for three Months, without Bail; but after he hath been in Priſon one Month, he may be diſcharged, if he will be bound, with two Sureties, before two Juſtices, never to offend, in that Kind, any more. 3 *Jac.* 1. *cap.* 27.

10. *Selling a Hare* forfeits 10 *s.* to be divided between the Poor and the Proſecutor.

11. By the Statute of 5 *Annæ*, an *Alehouſe-keeper*, *Carrier*, *Chapman*, *Higler*, *Inn-keeper*, *Victualler*, having in his Cuſtody, or who ſhall buy or ſell, or offer to ſell, a Hare after the 1ſt of *May*, 1707. forfeits 5 *l.* one Moiety to the Informer, and the other to the Poor of the Pariſh where the Offence was committed; and if he cannot pay it, he is to be ſent to the Houſe of Correction for three Months, without Bail, for the firſt Offence, and four Months for the next: The Conviction is to be before one Juſtice upon View or Oath of one Witneſs, within three Months after the Offence.

12. The aforeſaid Statute is made perpetual by the Statute of 9 *Annæ*, *cap.* 25. And that if any Hare is found in the Shop, Houſe or Poſſeſſion of one not qualified or intitled under ſome Perſon qualified, it ſhall be adjudged an expoſing to *Sale* within the former Act.

13. There muſt be but one Game-keeper in a Manor, and his Name muſt be enter'd with the Clerk of the Peace; and if any Game-keeper, whoſe Name is not ſo enter'd (or otherwiſe quali-

fy'd) do kill, he incurrs the ſame Forfeiture of 5*l.* ſo if he kill a Hare in the Night.

14. Officer or Solder killing a Hare, without Leave of the Lord of the Manor, forfeits 5*l.* or if not paid after Conviction, and within two Days after demanded by the Conſtable, his Commiſſion is void; and the Officer muſt pay for every Soldier convicted, 20*s.* both Sums to be diſtributed to the Poor.

Hart.

THe antient Charter of the Foreſt, made by *Canutus*, calls the Hart, *fera Regalis*, 'tis a Beaſt of the Foreſt, and called *Cervus*, in *Latin*; which *Iſidore*, *in* 12 *Lib.* tells us, is derived from the *Greek* Word κέρας, ſignifying an Horn: And *Bartholomæus de proprietatibus rerum*, *fo.* 357. ſays, he is the moſt ſtately Beaſt which goeth on the Earth, having, as it were, a Majeſty both in his Gate and Countenance.

2. *Budæus*, in his 2d Book *de Philologiâ*, writes, That *Exuvias illas anniverſarias, quibus orbati latent cervi, quaſi honore atque inſigni amiſſo, non Cornua, ut Latini, ſed caput, quaſi decus ferinum appellant venatores.*

3. 'Tis true, the *Hart* and the *Hind* are Beaſts of one Kind; but yet they are accounted ſeveral Beaſts, becauſe of the ſeveral *Seaſons* of hunting them; for the Seaſon of the Hind beginneth when that of the Hart endeth.

4. The Word *Hart* is a general Appellation for a *Stag*, *Staggard*, and every other Male Deer of that Sort, and ſo it is uſually underſtood; and the

Beaſt

Beast itself is the most noble and the worthiest of all Beasts of Venery, and is called,

The First Year, a *Hind-Calf*, or *Calf*.
The Second Year, a *Brocket*.
The Third Year, a *Spayad*.
The Fourth Year, a *Staggard*.
The Fifth Year, a *Stag*.
The Sixth Year, a *Hart*.

5. The ancient Writers tell us, That the Foresters and Wood-Men, in former Days, call'd him a *Stag*, and not a *Staggard*, in the fourth Year; and likewise they called him, the fifth Year, a great *Stag*; and some were of Opinion, that let his Age be what it will, it was not to be called a *Hart* until hunted by the King.

6. But this seems to be a Mistake, for after he is five Years old, he is always called a *Hart*. This appears in *Budæus*, 2 *Lib. de Philologia*, and that there are Three sorts of Harts.

1. A *Hart*, as aforesaid.
2. A *Hart-Royal*.
3. A *Hart-Royal* proclaimed

And yet all these may be but One Beast still.

7. For, at six Years old, he is called a *Hart*; and if afterwards he is hunted by the King, and escapes alive, he is called a *Hart-Royal*; and if, in hunting, he is driven out of the Forest so far, that he is not likely to return of himself, and the King giveth over hunting him, then, because he hath made such sport, the King causeth a *Proclamation* to be made in all the Towns and Villages near the Place to which he was pursued and hunted, that whoever should kill, hurt or harm him, and appoints

certain Foreſters to look after him till he returns to the Foreſt, and afterwards he is called a *Hart-Royal proclaim'd*; and by *Budæus*, *Eximius Cervus*, that it, a goodly Hart.

8. I have ſeen many antient Records in the Tower of *Nottingham Caſtle* very badly kept, and ſcarce legible; in which Caſtle the Court is uſually kept for *Peverill-Fee*: Amongſt which it appears, That in the Year 1194, King *Richard* being hunting in *Sherwood-Foreſt*, did chaſe a *Hart* out of that Foreſt into *Barneſdale* in *Yorkſhire*; and becauſe he could not recover him, he made Proclamation at *Tickill* in *Yorkſhire*, and at ſeveral other Places thereabout, That no Perſon ſhould kill, hurt or chaſe the ſaid *Hart*; and this was afterwards called a *Hart-Royal proclaim'd*.

9. In the Book-Caſe of 21 *H.* 7. *fo.* 3. *Placito* 7. it appeareth, That a Man was indicted for killing a *Hart-Royal proclaim'd*; and Exception was taken to it, for that it was not ſet forth where, or in what Place, the Proclamation was made. 7 *H.* 6. *fo.* 36. *Placito* 41.

10. The Time of Grace or Seaſon of a *Hart* beginneth at *Midſummer*, and laſteth till *Holy-Rood Day*.

The Terms are,

A Herd of Harts.
A Hart harboureth.
Rowſe the Hart.
A Hart belloweth.
A Hart goeth to Rut.
His Fat is called Sewet.
His Dung is called Fewmits, or Fewmiſhing.
His Footing is called the *Slot*.

When a *Hart* is paſt his Sixth Year, he is called, a *Hart of Ten*; and afterwards according

to

o the Increaſe of his Head, whether he is *crochet*, *almed* or *crowned*.

12. When he breaketh the Herd, and runneth to the Thicket or Coverts, the Foreſters ſay, he then taketh his *Hold*.

13. They call the round Roll of the Horn next to his Head, the *Bur*; they call the main Horn, the *Beam*; the loweſt Antler is called, the *Brow-Antler*, or *Bezantler*; the next is called, *Royal*; the next above that, the *Sur-royal*, and then the *Top*.

Hind.

1. THe *Hind* is the Female to the *Hart*; they are both of one Kind, yet are accounted ſeveral, becauſe of the different *Seaſons* of Hunting, for the Seaſon of the Hind doth begin when that of the Hart ends; ſhe is called,

The Firſt Year, a *Calf*.
The Second Year, a *Brocket's Siſter*.
The Third Year, a *Hind*.

2. The Seaſon of the *Hind* or Doe, beginneth on *Holy Rood-Day*, and laſteth till *Candlemas*.

The Terms are,

ff. A Herd of Hinds.
Her Dung is called *Fewmets*, or *Fewmiſhing*.
Her Fat is called *Sewet*.

Hue and Cry.

See { *Charge in Chief Juſtice*, 39.
Offenders, 21.
Appendix, Aſſiſa Foreſtæ, 11.

1. WHen a Foreſter or any other Officer of the Foreſt ſhall find any Perſons doing or intending to do any Hurt or Damage to the Foreſt, and they fly for the ſame, they are forthwith to make an Out-cry unto the Inhabitants and next Dwellers in the Foreſt, where ſuch Perſons were ſeen, requiring them in the King's Name to aid and aſſiſt them to purſue ſuch Offenders from Town to Town, and from Village to Village, Place and Place, within the limits and bounds of the Foreſt, until they are taken.

2. This Hue and Cry of the Foreſt is properly to be made by the Foreſter himſelf, becauſe he is uſually a Perſon known in that Place, and the more likely to be followed: Yet any other Officer or Miniſter of the Foreſt may make it; as appears in *the Aſſiſes and Ordinances of the Foreſt, Anno 6 Ed.* 1. *Artic.* 11. *viz. Si quis viderit malefactores infra metas foreſtæ, &c. debet illos capere ſecundum poſſe ſuum & ſi non poſſit debet levare huteſium & clamorem.*

3. If after ſuch *Hue and Cry* made as aforeſaid, any Perſon is negligent or refuſes to purſue the Offenders; then the Default of ſuch Perſon or Perſons, or Village, or Township ſo offending, ſhall be preſented by the Foreſter of the ſame Bailiwick at the next Court of *Swanimote* or *Juſtice-Seat*, which ſhall firſt happen; and if after ſuch Preſentment the Offenders ſhall be duly convicted, ac-

according to the Laws of the Foreſt, they ſhall be fined. *Kitch. Lane. fo.* 7.

But ſuch *Hue and Cry* is not to be made for every Treſpaſs and Offence done in the Foreſt, but only for ſuch as are done in hunting and deſtroying the wild Beaſts of the Foreſt, as it doth appear in the ſame Aſſiſes of the Foreſt, *Artic.* 11. For it is, *Si quis viderit aliquos malefactores aliquam feram capere & aſportare*; in ſuch Caſe he is to make *Hue and Cry, viz.* after thoſe who are Hunters and Takers of Veniſon, and not after ſuch as commit Treſpaſs in Vert.

5. So that *Hue and Cry* is to be made for a Treſpaſs in Veniſon only, and the Offence muſt be committed in the Foreſt, and not in the Purlieus, and it cannot be purſued out of the Limits and Boundaries thereof. 4 *Inſt.* 294.

6. And if after ſuch *Hue and Cry* made, and the People come to the Place where the Offenders are, if they reſiſt and will not yield; or if they fly, and any Perſon who came in Aſſiſtance to the Foreſter or other Officer, ſhall happen to kill one or more of them in the Bounds of the Foreſt, either in apprehending or taking them or any of them, he ſhall not be arraigned for the ſame before the King and his Juſtices, or before any other the King's Bailiffs, or any other within any Franchiſe or without; neither ſhall he for ſo doing loſe either Life or Limb, or ſuffer any other Puniſhment, but ſhall enjoy the King's Peace as before.

7. But Care is to be taken, That if ſuch Things happen, that the ſame be done within the Bounds and Limits of the Foreſt: For the Words of the Statute, *De malefactoribus in parcis* are, *If any Foreſter, &c. ſhall find any Treſpaſſer within his Liberty*; ſo that if he kill an Offender out of his Liberty, he muſt be puniſhed. *Magn. Chart.* 117. *B.*

8. For this and many other Cauſes 'tis neceſſary to know the true Bounds and Limits of every Foreſt.

9. If *Hue and Cry* be made by the Officers of a Foreſt, and if 'tis not purſued and followed with effect, the Townſhip, which is faulty, ſhall be fined. *Itin. Lanc. fo.* 7.

Hunting.

See { *Charge in Chief Juſtice*, 1, 37, 38, 45. *Purlieu*, 102, 104, 105, 108, 114, *&c.* to the End of the Chapter. *Warren*, 7.

1. THE Antiquity of Hunting is proved from *Nimrod* and *Eſau*, but the Derivation of the Word is of a more modern Date, *viz.* Hunting and Hunter are derived from the *French*, *Haunter*, which ſignifies in *Latine*, *frequentare*. *Cicero* hath this Phraſe, *Opes conſectari*, which is greedily to hunt after Riches; and probably from hence *Budæus* calleth Hunters *Sectatores ferarum*: *Terence* alſo uſeth the Word, *viz. ſectare belluas*; and *Ovid*, *feras perſequi*: But the Foreſters have another Derivation of the Word *Hunter*, *viz.* from *Haunt-Deer*, one who hunteth after Deer, and now uſed generally for Hunting all manner of wild Beaſts.

2. Hunting in Foreſts is Sport for Kings and Princes, and therefore not to be uſed by every common Perſon, but only by ſuch of the Nobility and others who have Authority from the King, or from his Juſtice in Eyre, or other Officers of the Foreſt, or by ſuch who have ſome good and lawful Authority ſo to do, and no other may hunt there.

3. All

3. All ſuch Perſons who have any lawful Claim, allowed in Eyre, by reaſon of any Grant from the King, to hunt in the Foreſt, may uſe the ſame according to their Grant; that is, they muſt purſue their Authority in the ſame manner it was granted.

4. In the Aſſiſes and Cuſtoms of the Foreſt, *Anno 6 Ed. 1. Artic. 20.* the Abbot of *Peterborough* had a Grant from the King to hunt Hares and Foxes in certain Foreſts.

5. So likewiſe in the Aſſiſes of the Foreſts of *Pickering* and *Lancaſter fo. 59.* ſeveral Perſons had Grants from the King to hunt Hares and Foxes, and alſo to hawk and take Fowls and Birds of Warren in a certain Place in the Foreſt: By vertue of which Grants they did make their Claims in Eyre before the Juſtices of the Foreſt; ſo that without ſuch Grants they could not hunt or hawk there.

6. And therefore by the Aſſiſes of *Pickering*, *fo. 39.* 'tis a Treſpaſs for a Lord or Owner of a Manor in the Foreſt, or any other Freeholder dwelling in the Regard thereof, to hunt or hawk in his Manor within the Regard, unleſs he hath ſome lawful Authority.

In Charta de Foreſta, Artic. 11. 'tis enacted, That any *Archbiſhop*, *Biſhop*, *Earl* or *Baron* of the Realm, coming to the King by his Order or Command, and paſſing thro' any of his Foreſts, may kill one or two of his Deer there by the *View* of the Foreſter, if he is preſent, or otherwiſe to blow a Horn for him.

8. From whence it may be inferred, that before the making this Charter they could not hunt in the King's Foreſts without a Warrant ſo to do, neither can they now, but when they are ſent for to the Court by the King's Command, and in their return home.

10. And in this Case four Things are to be observed strictly.

Viz.
1. That he be either a *Lord Spiritual or Temporal.*
2. That he be *sent* for by the King.
3. That it be done by the *View* of the Forester, if present.
4. If he be *absent*, that a Horn be blown for him.

Of Licences and Warrants to hunt in the Forest, and how they must be used.

10. He who hath any Warrant to hunt in a Forest, must pursue his Authority very strictly; for if he doth not, he is a Trespasser *ab initio*, and must be punished accordingly. 12 *H.* 7. *fo.* 15. *Plac.* 5.

11. Therefore if he hath a Warrant to hunt and kill a Buck in a Forest, Chase or Park, he must not take it away when killed, neither may he hunt or kill any other Deer, but only one *Buck* and no more, for he must not abuse his Authority.

12. In *Mich.* 18. *Ed.* 4. *fo.* 14. *Plac.* 12. it was held for Law in one *Ashton's* Case, That where a Man hath a *Warrant* to hunt and kill three Bucks, and to dispose of them for the Honour of him who was the Owner of the Park, and from whom he had the *Warrant*; that in such Case his *Servant* might not hunt or kill those Bucks by vertue of that Warrant, neither might he to whom the same was granted hunt with any manner of Servant, or in any Company whatsoever, but only by himself; and that he could not assign or transfer that Warrant to another, because it was only a *Licence of Pleasure and not of Profit*; for the Grantee had not any Property in the Thing granted.

13.

13. So in the Case of the Dutchess of *Norfolk*, *Anno* 13 *H.* 7. *fo.* 13. *Plac.* 2. she granted a Licence to the Earl of *Suffolk* to *hunt* in her Park at *Lopham* at his Will and Pleasure. It was adjudged, that the Earl could not hunt with any of his *Servants* with him, nor with any more Company than himself, because it was only a *Licence of Pleasure*. *Trin.* 12 *H.* 7. *fo.* 25. *Plac.* 5. *the like Case*.

14. But 'tis otherwise where a Man hath a *Licence of Profit*, for there he may justify to hunt with others.

15. And therefore in the said Case of the Dutchess of *Norfolk*, the Court held, That the Earl having pleaded, that she gave him a Licence *to hunt, kill and carry away the Deer*, that he might justify to hunt with his *Servants* and other Friends, because it was *a Licence of Profit*, and he had a Property in the Thing granted.

16. So in the same Term and same Year, *fo.* 12. *Plac.* 1. in the Case of the Earl of *Suffolk*, who brought an Action of Trespass against *Ralph Berney* and *Richard Whitley*, for Hunting in his Park, *Whitley* pleaded in Bar, That the said Earl at a certain Day and Place did deliver a sufficient *Warrant*, sealed with his Seal unto one *Robert Southwell*, directed to one *T.* the Keeper of the Park where the Trespass was supposed to be done, commanding him to deliver unto the said *Southwell* one *Buck* of the first Season; by vertue whereof the said *Southwell*, at the Time of the Trespass supposed, and the said *Whitley*, as his Servant, entered with him into the said Park, and there the said *Southwell* delivered the said Warrant unto the Keeper, and they required him to hunt, which he did, and killed one *Buck*; and that the said *Whitley* carried the same away, as it was lawful for him to do: And this was held a good Justification.

17.

17. In the Caſe of the Lord *Beaumont*, *Anno* 22 *H.* 6. *Paſch. fo.* 25. *Plac.* 23. it was held, That if a Man have a Licence for himſelf and *his Servants* to hunt in a *Chaſe*, *Park* or *Warren* at his Pleaſure; this is a *Licence of Profit*; for by vertue of thoſe Words for himſelf *and his Servants*, the Grantee hath a Property in the Thing hunted, becauſe he may juſtify Hunting by *his Servants*, which is more than a *Licence of Pleaſure*.

18. It hath been mentioned before, That where a Man hath a Licence to hunt in a Foreſt, his Authority muſt be ſtrictly purſued, (that is) he muſt not exceed it in any Point; for if he do, he ſhall be puniſhed, as if he had no Licence at all; as for Inſtance, if he hath a Licence to kill one *Buck in Seaſon*, and he wilfully hunts and kills a *Hind out of Seaſon*.

19. So likewiſe in the ſaid *Book-Caſe*, 12 *H.* 7. *fo.* 25. if he hath a Licence for himſelf only to hunt in a *Chaſe* at his Pleaſure, and he orders his *Servants* to hunt with him, and they hunt accordingly, both he and all his Servants are Treſpaſſers, becauſe he hath abuſed his Authority.

20. Laſtly, 'tis to be obſerved, that whatſoever hath been ſaid of Licences for Hunting in Chaſes and Parks, the ſame is to be underſtood of Licences for Hunting in Foreſts.

Who may grant Warrants to hunt in a Foreſt, and who not.

21. The King and all thoſe who have ſpecial Authority from him under the Great Seal, may grant Warrants to hunt in the Foreſt: And the Lord Chief Juſtice in Eyre may licence a Gentleman to hunt there, in his own Lordſhip or Manor, or in his own Freehold.

22.

22. A Subject who is Owner of a Foreſt, may grant Warrants to hunt there; but no Man can give Licence to hunt in the King's Foreſts, but himſelf or his Ch. Juſtice in Eyre, being within his Juriſdiction, or thoſe who by ſome Grant from the King have a ſpecial Authority ſo to do.

23. In *Eaſter Term, Anno,* 2 *Ed.* 4. *fo. plac.* 9. An Action of Treſpaſs was brought againſt the Defendant for hunting in the Plaintiff's Park. The Defendant pleaded, That the Plaintiff made one *John at Styles Keeper of his Park,* where the Treſpaſs was: And that at the ſame Day and Time of the ſuppoſed Treſpaſs, the ſaid Keeper did licence and pray the Defendant to kill two Deer for him: By vertue whereof he did kill two Deer, and ſo concludes, and prays Judgment, *ſi actio, &c.* And this was held no Bar, becauſe the Keeper had no ſuch Authority himſelf; for he was only to keep and preſerve, and not to kill the Deer; and therefore it was held in that Caſe, that he cannot juſtify the killing without a Warrant for that purpoſe; and if ſo, he cannot licence another.

The difference between Warrants of Pleaſure and Warrants of Profit.

24. This hath been in ſome meaſure explain'd before, *viz.* when a Man hath a Warrant *to kill and carry away* the Thing hunted and killed, in ſuch Caſe he hath a Property in it, and 'tis a Warrant of *Profit*, and he may hunt with what *Company* he will.

25. But where he hath no Property in the Thing hunted or killed, 'tis only a Licence of *Pleaſure*; and in ſuch Caſe he muſt not hunt with any more but himſelf.

26. And therefore, in every Warrant for Hunting, these Five things ought to be observed.

1. By whom it was granted, and whether the Person had an Authority to grant it.
2. For what it was granted, and what is the Purport thereof.
3. For what Place it doth serve.
4. To whom it is granted, and for what Time.
5. Whether 'tis a Thing of Pleasure or Profit.

The Difference between a Licence in Law and a Licence in Fait.

27. Where a Man hath a Licence to hunt by *Word* only, without *Writing*, or where he *prescribes* to hunt, as belonging to his Office in the Forest; this is called, a *Licence in Law*.

28. And it was never doubted, but such a Licence, by *Word*, is good between Common Persons; and therefore, where a Lord and Owner of a free Chase, brought an Action of trespass for hunting and killing his Wild Beasts in the same, the Defendant pleaded, That he had a Licence from him by *Word* only, without Writing; and, for that Reason, *Fencot*, who was of Counsel for the Plaintiff, took Exception to this in Bar; but it was held good. *Hil.* 42. *Ed.* 3. *fo.* 2. *Placito* 8. 12 *H.* 7. *fo.* 25. *Placito* 5. 18 *Ed.* 4. *fo.* 14 *Placito* 12. 13 *H.* 7. *fo.* 14. *Placito* 2. 34 *H.* 6. *fo.* 43.

29. But it hath been a Question, Whether such a Licence, granted by the King to a Subject, is good without *Writing*; because, as he taketh nothing from any Man, but by matter of *Record*, so neither doth he grant any thing, but by the like matter of *Record*.

30. Yet there are ſome Opinions, That a Verbal Warrant from the King is good; *viz. in Anno* 4 *H.* 7. *fo.* 6. *Placito* 2. *Bryan* and *Shelley* held, That the King may give many things without any *Writing*, and that ſuch Gift of Chattels ſhall be good.

31. And in *Mich.* 39. *H.* 6. *fo.* 17. *Placito* 21. in an Action of Treſpaſs, the Defendant juſtified by pleading a Command of the King, by *Word* only, without *Writing*; and this was held a good Juſtification.

32. So that it ſeemeth, That if the King giveth a *Verbal Licence* to a Man to hunt in one of his Foreſts, and that if he hunt there by vertue of this Licence, this is juſtifiable; becauſe the hunting is no more than a Treſpaſs without ſuch a Licence: And if a Man may plead the King's Command by *Word* only, in Bar of a Treſpaſs, by the ſame Reaſon he may plead his *Verbal Licence* in Bar of the like Treſpaſs.

He who abuſeth his Warrant is a Treſpaſſer ab initio.

33. He who abuſeth or miſuſeth a Warrant or Licence to hunt, is a Treſpaſſer *ab initio*, and ſo are all they who hunt with him.

34. *Anno* 11. *H.* 4. *fo.* 74. *Placito* 16. an Action of Treſpaſs was brought, *Quare vi & armis domum ſuam fregit, &c.* The Defendant pleaded not Guilty to the Force; and to the reſt, that he was ſeiſed in Fee of the ſaid Houſe, and did let it to the Plaintiff for a Term of Years; and ſo juſtified the coming into the Houſe when the Doors were open, to view the Repairs, and what Waſte was done; and this was held a good Plea. But the Plaintiff reply'd, That beſides his coming into the Houſe to ſee what Repairs were needful, *&c.* he did alſo commit certain Treſpaſſes againſt the Will and Conſent of the Plaintiff; for which Cauſe he was

adjudged

adjudged a Treſpaſſer *ab initio*, and yet his coming into the Houſe at firſt was juſtifiable; but becauſe he did miſuſe his Authority, he was a Treſpaſſer, as aforeſaid.

35. In like manner, he who hath a lawful Authority to hunt in the Foreſt, and if, in his hunting, he miſuſeth that Authority, ſhall be accounted a Treſpaſſer *ab initio*, and ſhall be puniſhed as ſuch.

How Hunters, without Licence, ſhall be puniſhed.

36. If any Foreſter or Keeper ſhall take any one *in the Manner*, then he may carry him to Priſon, from whence he ſhall not be delivered, without a ſpecial Warrant from the King, or from his Chief Juſtice in Eyre of the Foreſt.

37. This appears by the *Ordinance of the Foreſt*, made in 6 *Ed.* 1. *Artic.* 10. *viz. Si quis ceperit feram ſine Warranto in foreſta, corpus ſuum arreſtetur ubicunque inveniatur infra metas foreſtæ, & quando captus fuerit, non deliberetur ſine ſpeciali præcepto Domini Regis vel capitalis Juſticiarii foreſtarum.*

38. Now the Words are, *Si quis ceperit feram*; yet if a Man is apprehended *hunting* in the Foreſt, though he hath not *taken* a Wild Beaſt, he ſhall be puniſhed as if he had actually *taken and killed one*, becauſe, by *the Aſſiſes of the Foreſt, Voluntas reputabitur pro facto.*

39 In *the Aſſiſes of the Foreſt of Pickering*, *fo.* 3. it was adjudg'd, That he who enters the Foreſt with Bow and Arrows with an *intent* to offend there, is to be puniſhed, though he do not act.

40. So where an *Abbot* lent a Bow and Arrows to another, to the *Intent* to kill the King's Deer, he was fined. And, *Anno* 1632. *Wheatley* was fined 50 *s.* being preſented for carrying a Gun with *Intent* to kill the Deer. 1 *Jones* 275.

41. But the Foreſter muſt not arreſt the Body of any Offender, except he take him *with the Manner*, that is, according to *the Aſſiſes of Lancaſter*, *fo.* 13. either,

1. *Dog-draw.*
2. *Stable-ſtand.*
3. *Back-bare.*
4. *Bloody-hand.*

42. (1) *Dog-draw* is where a Man hath wounded a Wild Beaſt, and is found with a Hound or other Dog drawing after him to recover the Beaſt ſo wounded.

43. (2) *Stable-ſtand* is where one is found at his Standing ready to ſhoot at any Deer, or ſtanding cloſe by a Tree with Greyhounds in his Leaſh, ready to let ſlip.

44. (3) *Back-bare* is where a Man hath killed a Wild Beaſt in the Foreſt, and is found *carrying* him away.

45. (4) *Bloody hand* is where one is found in a Foreſt in any ſuſpicious Manner, and is bloody.

46. All theſe are ſaid to be taken *in the Manner*: The Puniſhment is by a judicial Sentence at the Juſtice Seat, and to be fined at the Diſcretion of the Lord Chief Juſtice, and committed till he pay the Fine, and then and there to be bound to the Good Behaviour in the Foreſt for ever afterwards.

47. By the Statute of 1 *H.* 7. *cap.* 7. it was enacted, That upon Information given to any of the King's Council, or to any Juſtice of the Peace of the County, *&c.* of any unlawful *Hunting by Night*, or with *painted Faces*, in any Foreſt, Park or Warren, or of any Perſon ſuſpected thereof, it ſhall be lawful for them to make a Warrant to the Sheriff, or to any Conſtable, *&c.* to apprehend ſuch Perſon, and to bring him before them, and then to ex-

amine him of ſuch hunting; and if he conceal the Offence or Offender, 'tis Felony; if he confeſs the Truth, then the Offence by him done in hunting, is finable at the next general Quarter-Seſſions; and if any Reſcous be made, ſo that the Warrant cannot be executed, 'tis Felony, to be inquired and determined as other Felonies are.

How far a Purlieu Man may purſue his Chaſe in Hunting.

48. A *Purlieu*-Man may not hunt in every Man's Lands within the *Purlieu*, but in his own Lands only; and therefore if he finds the Beaſts of the Foreſt in his Woods or Lands in the *Purlieu*, in ſuch Caſe he hath a *Property* in them againſt any other Man, *ratione ſoli*, (the King only excepted;) and if he kill them by hunting, without any *foreſtalling* before they recover the Foreſt, then they are abſolutely the Property of him who killed them, and the King hath no Intereſt in them; but if they recover the Foreſt, ſo that they are *infra metas foreſtæ*, that is, within the Limits and Bounds thereof, then they are *in Statu quo priùs*, and are the King's Wild Beaſts again.

49. So that though they are out of the Foreſt, and in the *Purlieu*, yet the King hath, in ſome ſort, a Property in them ſtill, and that againſt every man but againſt the *Owner of the Lands* where they are.

50. But if the Owner of the Lands *beginneth the Hunting in his own Lands*, where he hath a lawful Intereſt and Property in the Beaſts ſo long as they are there; then, by reaſon of that Property, he may purſue his Hunting through any Man's Woods or Lands, ſo as he doth not enter into any *Foreſt*, *Chaſe*, *Park* or *Warren*, which are Places privileged by

by the Law, that no Man may enter there but the Owner.

51. And if he kill the Beaſt in another Man's Land, and out of ſuch privileged Place, he may take and carry away the ſame by reaſon of the firſt Property, in reſpect of the *Soil* where it was when he *firſt* began hunting.

52. This appears in *Mich.* 12 *H.* 8. *fo.* 10. *viz.* If I find a Pheaſant in my Lands, and I let my Hawk fly, I may follow the Flight into another Man's Land by reaſon of the firſt Property which I had in the Pheaſant, *ratione ſoli*; and if my Hawk kill the Pheaſant in another Man's Land, I may enter and take it by reaſon of that Property and Purſuit; for the Poſſeſſion of the Hawk ſhall be accounted in Law my Poſſeſſion; and in that Caſe, I ſhall not be puniſhed as a Treſpaſſer for taking and carrying away the Pheaſant, but only for the entring the Ground: And the Law is the ſame in the Caſes of all Wild Beaſts of the Foreſt and Chaſe.

53. But though I may purſue the hunting *uſque ad metas foreſtæ*, yet I muſt not enter there; for when the Wild Beaſt hath recovered the Foreſt, I muſt call the Dogs back, that is, as the old Foreſters call it, I muſt blow a *Recheſe* with my Horn, as loud as I can.

54. And if ſuch *Purlieu*-Man doth not immediately call back and rebuke his Dogs, after the Beaſt hath recovered the Foreſt, and they happen to kill it *in the Foreſt*, then the Owner of the Dogs is a Treſpaſſer of the Foreſt, and ſhall be puniſhed as ſuch, though he himſelf never came within the Bounds thereof.

55. But if he had called his Dogs back, and yet they had hunted and killed the Beaſt in the Foreſt, in ſuch Caſe he ſhall not be puniſhed, becauſe he

did his Endeavour *repellere & retorquere Canes*, and to reſtrain them from hunting there.

56. This appears in the Earl of *Arundel*'s Caſe, *Hill.* 43 & 44 *Ed.* 3. *fo.* 8. *Placito* 23. *viz.* If a Man hath Lands ſown with Corn adjoining to a free Chaſe or Foreſt, and the Wild Beaſts come out on thoſe ſown Lands, and the Owner hunts them with his Dogs, but calls them back again before they enter the Foreſt; yet if they ſtill purſue and enter the Foreſt or Chaſe, and kill them there, the Owner is not to be charged as a Treſpaſſer.

57. From which Caſe it may be inferred, That if the Hunter had not called back his Dogs, he had been a Treſpaſſer; and much more thoſe are Treſpaſſers, who hunt in the *Purlieus*, and are ſo far from recalling their Dogs, that they follow them into the Foreſt, and encourage them there, and kill and carry away the Deer as their own.

58. 'Tis probable, the Earl of *Arundel*'s Caſe might be adjudged upon the Authority which happen'd ſix Years before that Time, *viz. Paſch.* 38 *Ed.* 3. *fo.* 10. *B* which was the Caſe of the *Pheaſant* before mentioned; *viz.* If a Man finds a *Pheaſant* in his own Ground, and lets his Hawk fly, and ſhe flieth after the Pheaſant into a Warren (which is a privileged Place for Birds of Warren) and kills it there, the Falconer ſhall not have the Pheaſant, but the Owner of the Warren; but if the Hawk had kill'd it out of a privileged Place, then 'tis otherwiſe: Which proves, That as ſoon as the Pheaſant (which is naturally wild) was within the Bounds of the *Warren*, it belonged to the Owner; and therefore the killing it there could not veſt any Property in another Man; for the Falconer ſhould not have ſuffered his Hawk to fly into the Warren if he could, by any Means, have prevented it.

59. Both

59. Both which Cases before mentioned prove, That if any Wild Beasts are killed within the Meers or Bounds of the Forest, they belong to the King or to the Owners of the *Forests*, *Chases* or *Warrens*; and not unto him who killed them.

60. For if the Dogs of a *Purlieu*-Man follow a Deer towards the Forest, and before they fasten on it, or before he recall them from hunting, the Deer doth recover a Common High-way, or a River, which are *Meers* of the Forest, and being on or in the said *Meers*, the Dogs kill it there; in such Case the King, or the Owner of the Forest, ought to have the Deer, because all the *Meers* and *Bounds* are the King's, for they are Parcel of the Forest.

61. This appears by *the Assises and Customs of the Forest*, made *Anno* 6. *Ed.* 1. *Artic.* 19. *viz. Quòd secundùm assisam forestæ omnes Metæ forestæ sunt integræ Domino Regi*; though they stand on another Man's Land or Soil: So that he who kills a Deer there, kills it in the Forest.

62. Thus, in *the Assises of Pickering*, *Anno* 10. *Ed.* 3. the Abbot of *Whitby* killed a *Hart* in the River *Derwent*, which was a *Meer* of that Forest; and he and his Company were indicted, *Quia ceperunt unum Cervum in aquâ de Derwent quæ est marchia forestæ & venationem illam secum asportavit*; for which Fact he was fined and bound to his Good Behaviour in the Forest. *Assis. Pickering*, *fo.* 6, 41.

63. But yet, in some Cases, a *Purlieu* Man may lawfully pursue his Chase, and hunt and kill a Deer in the Forest; for if he find such Deer in his *Purlieu*, and, in hunting it towards the Forest, the Dogs fasten on it before 'tis within the Bounds thereof, and the Dogs still hanging on, are drawn by the Force of the Deer into the Forest, and 'tis killed there; in this Case, by reason of the first Property which he had, *ratione soli*, and also by the Pursuit

and Poſſeſſion thereof by his Dogs, before the Deer entered the Foreſt, he may lawfully follow his Chaſe there, and take and carry away the Deer, becauſe he was actually poſſeſſed thereof by his Dogs (which are his Servants) before it entered the Foreſt.

64. In the aforeſaid Caſe, 12 *H.* 8. it appeareth, That if a *Purlieu*-Man doth begin to hunt in another Man's Grounds in the *Purlieu*, and not in his own; this being an Injury to the Owner of thoſe Grounds, if his Dogs faſten on a Wild Beaſt before it recovers the Bounds of the Foreſt, and are drawn in by Force, and then they kill the Deer there, the Owner of the Dogs muſt not enter into the Foreſt, nor take the Beſt ſo killed, becauſe the *firſt* Hunting and Purſuit began by *Wrong*; for he never had any Property in the Beaſt, *ratione ſoli*; and therefore, though he doth not come himſelf into the Foreſt, yet he ſhall be a Treſpaſſer of the Foreſt, becauſe his Dogs enter'd it and killed a Wild Beaſt, in which he never had any manner of Property.

65. And in ſuch caſe he cannot juſtify his Hunting, and ſay, that he is a lawful *Purlieu*-Man; and that he found the Beaſt on his own Lands within the *Purlieu*; which would be a good Juſtification by the Owner of the Land in which the Beaſt was found, but not by him where it was not found. *Hill.* 43 *Ed.* 3. *fo.* 8. *Placito* 23. 38 *Ed.* 3. *fo.* 10. *B. Hill.* 13 *H.* 7. *fo.* 16. *Placito* 14. *Paſ.* 7 *H.* 6. *fo.* 36. *Placito* 41.

66. So in the Caſe of the *Hawk* and *Pheaſant* before mentioned, which was found in the Land of the Owner of the Hawk, and kill'd in another Man's Land; the Owner of the Hawk ſhall have it, and not the Owner of the Ground where it was killed, becauſe of the firſt Property which he had *ratione ſoli*: But if the Pheaſant had been found

found in another Man's Land, and purſued by the Hawk, and killed; in ſuch Caſe it doth belong to him who is the Owner of the Ground where it was killed; for no Man ſhall take the Benefit of his own Wrong; for the Owner of the Hawk began his firſt Flight at the Pheaſant by a Wrong: And in ſuch Caſe, he cannot juſtify his Entry into another Man's Ground to make a Flight, nor the Purſuit of ſuch Flight, and taking the Pheaſant, as he might have done if he had firſt made his Flight in his own Ground.

67. *Preſentatum eſt per foreſtarios, & convictum per Viridarios quòd Nicholaus Merill & aliis venerunt in foreſtam illam, &c. & cum arcubus, ſagittis & Leporariis ibidem ceperunt duos cervos.* 8 *Ed.* 3. *in foreſta Pickering.*

Inclosures in a Foreſt.

See { *Aſſart*, 14. *Charge to Chief Juſtice*, 5, 30. *Ceremon.* 48. *Purpreſture*, 14. *Wood*, 45. *Appendix*, Stat. 22 Ed. 4.

1. IF a Chief Juſtice in Eyre will grant a Licence to a Man to incloſe his Ground in the Foreſt, paying a certain Rent, and ſuch Licence is made *ſedente Curiâ*, 'tis good for ever, but not otherwiſe; for if 'tis not granted in Court, it may be pulled down again. *Jones's Rep.* 277.

2. But then ſuch Incloſures muſt be with *low Hedges*, which may not diſturb the Game. This appears in the *Regiſter*, *fo.* 247. ſ. *Mandamus vobis quòd per Sacramentum, &c. inquiratis, &c. ſi ſit ad*

damnum foreſtæ noſtræ aut alicujus alterius ſi concedamus R. B. ſolum, &c. parvo foſſato & baſſâ haiâ ſecundum aſſiſam foreſtæ includere, &c.

3. So that *arable* Land may be incloſed, not with high Hedges, but *cum parvo foſſato & baſſâ haiâ*, according to *the Aſſiſes of the Foreſt*; but Woods and Coverts in the Foreſt may be incloſed with *high Hedges and Ditches*, to preſerve them from the Hurt and Cropping by the Cattle, until they are paſt all Danger.

4. If a Man claims a Liberty to incloſe twelve Acres in a Foreſt, by vertue of Letters Patent from the King, it ſhall be inquired *per miniſtros foreſtæ*, whether it was incloſed *parvo foſſato & baſſâ haiâ ſecundum aſſiſam foreſtæ*, or not; becauſe the King's Licence ſhall be taken to a general and common Intent, *viz.* That he ſhall incloſe within the Foreſt *ſecundum Aſſiſas foreſtæ*, as he may; and therefore, without ſpecial Words in the Licence, he ſhall not incloſe *magno foſſato & altâ haiâ*. *Jones's Rep.* 278.

5. *Parks* being laid open to Foreſts for forty Years, may yet be incloſed again; and they may kill any Deer which come into thoſe *Parks*: So though Incloſures have been continued for forty Years, if they were not before, they may be deſtroyed and laid open. 2 *Rep.* 155.

6. *In Itinere Windſor*, *Jones's Rep.* 296. *Thomas Cary* claimed *Sunninghill-Park*, *Fore extra foreſtam*, *& habere liberam Warrenam ibidem licet ſit infra metas foreſtæ*. And this was by vertue of Letters Patent from King *Charles* the Second.

In this Caſe, the Officers of the Foreſt ought to inquire, Whether the Warren is incloſed with Pales? and whether there are any *Salteries* in it, ſo that the King's Deer may get in? and whether there are Conies there? and if there are, whether the Park is ſo incloſed that they cannot get out, for all thoſe are Cauſes of Seiſure.

7. And

7. And it being found, that the Park was well paled, and that there were no *Salteries*, and that the Conies could not get out, the Claim was allowed, *& insuper dictum est ei per Curiam quòd parc. cum præd. amodo includat, &c.*

8. And as a Man may have a Park in a Forest by *Grant*, so he may by Prescription; but then likewise it must be inclosed, that the Beasts of the Forest may not enter, otherwise 'tis a Forfeiture of the Park; and so it is if he have a *Saltary* or *Deer-Leap*, for the nature of a Park is to be inclos'd; and therefore, in 10 *H.* 7. *fo.* 6. it is said, That a Park consists in *Soil*, *Inclosures*, and *Game*: And in 15 *Ed.* 3. *Thomas* Earl of *Lancaster*, Lord of a Forest, gave Licence to one *John Harrington* to make a Park in his Forest; and there it was adjudged, That if the Grantee doth so slightly inclose the Park, that the Beasts of the Forest may get in, 'tis a Forfeiture, and the Owner of the Forest may enter and take the Deer.

9. An Action of Trespass was brought against the Defendant for breaking the Plaintiff's Close: He pleaded, That the Place where the Trespass was supposed to be, 'is called *B.* adjoining to the Forest of *G.* which is the King's Forest; and sets forth, That one *R* was Forester there, and lays a *Prescription* in himself and his Ancestors, *&c.* and then shews, that the Plaintiff, and all those whose Estate he had in a Place adjoining to the Forest, have constantly used to impale, *contiguè versus* the said Forest; and that, for want of paling it, Four Deer escaped out of the Forest, into the Place where the Trespass was supposed; and that the Defendant, as Servant to the said *R.* the Forester, and by his Command, drove them to the Forest again.

10. It was argued, that this Plea was not good; for though the Fault might be in the Plaintiff, for not

not paling againſt the Foreſt; yet it was a Wrong done to the King, which he might puniſh: But 'tis unreaſonable, that, becauſe the Plaintiff had done an Injury to the King, therefore the Defendant might do the like to the Plaintiff.

11. And the better Opinion was, That the Plea was not good; for though the Fault was in the Plaintiff for not paling, it was not lawful for the Foreſter, or any Man, to drive the Deer out of the Ground, or to take them; and the Reaſon is, becauſe the King had no Property in them; and if ſo, the Foreſter could not meddle with them when they were in another Man's Ground: And therefore the hunting them, by the Defendant, muſt be wrongful; for this is not like the Caſe of *tame* Cattle, where the Property ſtill remains in the Owner, though they are out of his Grounds, for which Reaſon he may retake them where-ever he finds them: But 'tis not ſo where the Beaſts are *wild*; for if a Man breaks a Park-Pale, and the Deer go out, you cannot purſue them into the Land of him who broke the Pales; becauſe, when they are out of the Park, the Owner hath no Property in them; he is to take his Remedy by an Action *de parco fracto*. *Kelleway* 30.

12. *The Aſſiſes of the Foreſt* are, That a Man may not incloſe any Ground within the Foreſt *ad nocumentum ferarum*; and that if any one hath a Licence to incloſe, he may not do it *cum altâ haiâ & foſſatâ nec cum alto palatio contra aſſiſam foreſtæ*. *In Aſſiſ. Lancaſtr. fo.* 6.

12. He who is preſented to have aſſarted or incloſed any Land in the Foreſt, either belonging to the King, or to any other Man, ſhall be fined; but if he will compound with the Juſtice, he may continue the ſame, paying a yearly Rent to the King, which muſt be enter'd of Record at that time. *Aſſiſ. Pick. fo.* 7.

In-

Indictment.

See { *Offenders.*
Appendix, Stat. 7 R. 2.

1. THe following is a very good Form of an Indictment.

Se Quòd B. R. eſt communis Malefactor venationis ubique in Foreſta & Malefactoribus venationis conſentiens.

2. For 'tis a good Indictment to alledge, *Quòd B. R. conſuetus eſt ponere acutas Cathcas in berkis haiarum ad feras capiend.*

3. So tis, *Quòd R. B. venit in Paxco de N. ad malefaciend. in venatione.*

4. An Abbot of *Whitby* kill'd a Hart in the River *Derwent*, which was the Meets of the Foreſt of *Pickering*; and he and his Company were indicted, *Quia ceperunt unum Cervum in aqua de Derwent, quæ eſt Marchia Foreſtæ; & venationem illam ſecum aſportavit. Itin. Pickering. fo.* 6, 41.

Jury, See *Appendix*, Stat. 7 R. 2.

King.

1. THe King having a continual Care for the Preſervation of the Community, the Law, amongſt many other Privileges, gives him the Prerogative to have his Places of Recreation whereſoever he will direct; and therefore he may reſerve the Wild Beaſts to himſelf to hunt in ſuch privileged Places where he will appoint; for he may, by Law, make

make a Foreſt at his Will and Pleaſure (4 *Inſt.* 300. 301. *contra.*) as he may enter the Grounds of any of his Subjects where any *Mines* of Gold or Silver are found, and carry the Metal away; for the Law gives the moſt excellent Things to the moſt excellent Perſon.

2. In like manner, becauſe Wild Beaſts of Venery, and Beaſts and Fowls of Chaſe and Warren, are Things of great Excellency, therefore they are moſt proper for the Dignity of a Prince, and, in a peculiar Manner, belong to him only: And this is the Reaſon why 'tis not lawful for any Man to make a *Chaſe*, *Park* or *Warren*, on his own Freehold, to preſerve any Wild Beaſts or Birds of Foreſt, Chaſe, Park or Warren, without the King's Warrant ſo to do; and the Offender in ſuch Caſe is to be puniſhed in a *Quo Warranto* brought againſt him, and the Franchiſe is to be ſeiſed into the King's Hands, becauſe ſuch Beaſts belong to the King, as 'tis in *Bracton*, *Lib.* 2 *cap.* 24.

3. ff. *Habet enim Rex præ cæteris omnibus in regno ſuo, de jure gentium, privilegia quæ de jure naturali eſſe deberent inventoris, ſicut Theſaurum, Wreccum Maris, craſſum piſcem, Sturgionem, Wayvium, quæ in nullius bonis eſſe dicuntur. Habet etiam de jure gentium in manu ſuâ, quæ de jure naturali debent eſſe communia, ſicut feras beſtias, & aves non domeſticas, quæ deberent eſſe communia de jure naturali, & per apprehenſionem & captionem & aucupationem propria.* See *Commentar.* 318. Stat. 17 *Car.* 1. *cap.* 16. *Br. action ſur Statute* 48. *Quo Warr.* 7. *Lib. Intration. Quo Warr.* 2 6 *Ed.* 2. 22 *Aſſiſar. Placito* 34.

Laws

Laws of the Foreſt and Purlieus.

See *Boundaries*, 14.

1. THE Laws of the Foreſt are *general*, becauſe they reſpect all Foreſts alike; they are likewiſe *particular*, becauſe they relate to Foreſts, and to no other Places.

2. They conſiſt principally in three Things, *viz.* In the Preſervation and Continuance of the Place to be a Foreſt; in the Preſervation of the *Vert*, which are the Green Woods and Coverts there; and in the Preſervation of the *Veniſon*, which is every Beaſt of the Foreſt and Chaſe, that being a general Word for all; and there can be no Treſpaſs committed in the Foreſt, but it muſt be in one of theſe Particulars.

3. By the Records of the Dutchy Court of *Lancaſter*, it appears, That the Earl of *Lancaſter* had a Foreſt in the Counties of *Lancaſter* and *York* in the Reigns of *Ed.* 2. and *Ed.* 3. and did execute the Foreſt-Laws there, in as ample a Manner as ever any King did before him.

4. And even at this Day, there are no Records extant which are of that Validity relating to Foreſts as thoſe Laws are; and therefore 'tis neceſſary for him who will be learned in the Foreſt-Laws, carefully to read *the Aſſiſes of the Foreſts of Lancaſter* and *Pickering*; in which he will find many Precedents of Judgments and Reſolutions, and almoſt every thing which may happen or relate to Foreſts; therefore thoſe Aſſiſes are in the nature of Year-Books to the Foreſt Laws.

5. Before the making of *Charta de foreſta* there was no certain Law to puniſh Offences committed in Foreſts; for, at firſt, the King cauſed ſuch Offenders to be puniſh'd in ſuch manner as he thought fit, till King *Canutus*, and other Kings, made Ca-

nons

nons and Conſtitutions to preſerve the *Vert* and *Veniſon.*

6. Theſe Conſtitutions afterwards, by continuance of Time, were taken for Laws, and even thoſe Laws were not certain before the making the ſaid Statute of *Charta de foreſta.*

7. But the Laws of the Foreſt did always differ from the *Common Law*: This appears *in Libro Rubro*, in the Exchequer, in theſe Words:

8. ff. *Sanè foreſtarum Lex, ratio, pœna quoque vel abſolutio delinquentium, ſive pecuniaria fuerit, ſive corporalis, ſeorſum ab aliis regni judiciis ſecernuntur: Et ſolius Regis arbitrio ſeu cujuſlibet familiaris ad hæc ſpecialiter deputati ſubjicitur: Legibus quidem propriis ſubſtitit, quæ non de Jure Communi ſed voluntariâ principum Inſtitutione ſubnixæ eſſe debent: Adèo ut quod per legem ejus factum fuerit non juſtum abſolutè, ſed juſtum ſecundùm Legem foreſtæ dicitur, quia in foreſtis penetralia Regum ſunt, & eorum maximæ deliciæ, ad has quidem venandi cauſâ, curis quandoque depoſitis, accedunt, ut modicâ quiete recreentur illic, feriis ſimul & multis Curiæ tumultibus omiſſis, in naturalis libertatis gratiam, pauliſper reſpirant; unde fit, ut delinquentes in ea ſoli Regiæ ſubjiceant animadverſioni.*

9. As for the Laws and Ordinances of the *Purlieus*, they are more properly to be called, *The Laws of the Foreſt*, though they chiefly concern the diſorderly hunting and Treſpaſſes in the Purlieus, becauſe they generally tend to the Preſervation and Continuance of Foreſts.

10. Thoſe Ordinances, for the moſt part, are no other than the Common Law, or ſuch which are grounded thereon; and they began in the Reign of *H.* 3. who diſafforeſted certain Places; but yet had ſuch a ſpecial Care of the Wild Beaſts of Venery and Chaſe, that he made Laws and Ordinances to preſerve them in thoſe Places.

11. This

11. This appears in *the Aſſiſes of Woodſtock*, and likewiſe ſince the time of *H* 3. and the Statute *de Charta de foreſta*, when all the new Afforeſtations were diſafforeſted by the Perambulations, it would have been a difficult thing to preſerve the Wild Beaſts, which, in great Numbers, came to thoſe diſafforeſted Places, without certain Laws and Ordinances made for that purpoſe.

Manner, See Hunting, 41.

Nuſances in a Foreſt.

1. WHatſoever tends to the Hurt or Deſtruction of the Foreſt, or of the *Vert* or *Veniſon*, or which tends to the breach of thoſe Laws made for the Preſervation of them, the ſame is and may be called a *Nuſance* of the Foreſt; which is a Word that generally comprehends every Offence there, or which may be done againſt the Laws of the Foreſt.

How many Sorts of Nuſances of the Foreſt there are.

2. There are three ſorts of *Nuſances* of the Foreſt;

3. The Firſt is called, *Nocumentum Commune*; and this ſort of *Nuſance* is a general Hurt, as well to the Inhabitants, as to the Beaſts of the Foreſt, as for Inſtance; If any Man, who ought to make or repair a Bridge over the River for a common Paſſage into a Highway leading through the Foreſt, and he ſuffers it to be in Decay, ſo that People cannot paſs as they ought to do, but are forced to go through the Foreſt out of the way, both to the Trouble of themſelves, and the Diſquiet of the Deer; this is a *Nuſance*, and this is to be preſented

ſented at the Juſtice-Seat before the Chief Juſtice in Eyre. *Itin. Lancaſtr. fo. 7.*

4. So it is if the common Highways in the Foreſt are ſuffered to be out of repair, that Men cannot paſs as uſually they have done.

5. So alſo it is if any *Foreigner*, who dwells out of the Boundaries of the Foreſt, doth ſurcharge the Common there, having neither Freehold, nor any manner of Right there; this is a Common *Nuſance* as well to the Inhabitants of the Foreſt, who have Right of Common, as to the Wild Beaſts there.

6. In like manner, the erecting a Water-Mill upon a River in the Foreſt, or making a Dam, or ſtopping a Water-courſe, ſo that the Water overflows, and drowneth any Meadow or Paſture Ground, or any common Highway there; this is a common *Nuſance*, and puniſhable by the Chief Juſtice in Eyre at his Juſtice-Seat.

7. The Second Sort of *Nuſence* is called *Nocumentum Speciale*, and this tends chiefly to the Hurt of the Wild Beaſts of the Foreſt; it comprehends all manner of Hunters and Treſpaſſers which, in any ways, offend againſt the *Veniſon* or the Wild Beaſts, as by Hunting, or in any other manner, to take and deſtroy them, or intending ſo to do, either with Dogs, Greyhounds or otherwiſe.

8. The third ſort of Nuſance is called *nocumentum generale*, and this tends to the hurt of the whole Foreſt, and as it may happen to the wild Beaſts, it comprehends all manner of Treſpaſſes, which tend to the waſte, hurt or deſtruction of the Vert; the Conſequence whereof is the driving the Deer out of the Foreſt to other Coverts, which is a hurt to them; for whatever tends to the hurt of the *Vert or Veniſon*, tendeth to the general hurt of the Foreſt it ſelf.

9. This *nocumentum generale* comprehends likewiſe all Surcharges of the Commons, all *Agiſtors* of

their own Paſture Lands, by eating them ſo bare that the Deer can have little or no feeding there, all *Aſſarts* and *Purpreſtures*, and all manner of Treſpaſſes, which tend to the hurt or deſtruction of the Herbage or Paſture in the Foreſt, or any unlawful diſquieting the wild Beaſts.

Who are to inquire of Nuſances in the Foreſt.

10. The Regarders of the Foreſt are to inquire into all theſe *Nuſances*, and to make their Preſentments and Certificates to the *Verderors* at the next *Swanimote Court* to be holden for the Foreſt, that the Offenders may be tried according to *Ordinatio foreſtæ inde Anno* 34 *Ed.* 1.

11. After ſuch Offences are tried, the Proceedings are to be ſealed up and kept by the *Verderors*, until the coming of the Chief Juſtice in Eyre, and then they cannot be traverſed.

How the Nuſances ſhall be remedied, and in what manner the Offenders ſhall be puniſhed.

12. At the coming of the Chief Juſtice in Eyre, the Nuſances ſhall be thus remedied.

13. If 'tis a Common *Nuſance*, as in not repairing Bridges, or ſuch like, which is *Commune nocumentum*, the Offender being convicted, and bound to appear before the Chief Juſtice, he ſhall cauſe the Offender to be bound with ſufficient Sureties to ſee the ſame repaired (as it ought) by a certain Day, or otherwiſe to forfeit his Bond, and alſo he may fine him for this Default.

14. But if he be convicted and adjudged to repair it, and afterwards neglects to do it, then, if he is bound to appear at the *Juſtice-Seat*, and refuſeth to appear there, and Judgment is there given againſt him, that he ought to repair, and the

firſt Judgment affirmed; in ſuch Caſe, if he doth not fulfill the ſame, his Lands and Tenements ſhall be ſeiſed into the King's Hands, until he hath repaired (as he ought) purſuant to the Judgment.

15. So likewiſe if any Foreigner, who hath neither Freehold or Right of *Common* in the Foreſt, do *Surcharge* the ſame, he ſhall be fined for the firſt Offence, and his Beaſts forfeited for the third Offence: And he who erects a Water-Mill on a River as aforeſaid, or makes any Dam to drown a Meadow, or ſtop any Paſſage, ſhall be fined at the Diſcretion of the Chief Juſtice in Eyre, and ſhall be bound in a great Sum of Money, with ſufficient Sureties, to amend the Default before a Time then limited for that Purpoſe.

16. If an Offender be convicted of that which is called *Nocumentum ſpeciale*, viz. of Hunting in the Foreſt, or Treſpaſſing there to the hurt of the wild Beaſts or Veniſon, he is to be committed, ranſomed and bound to his Good Behaviour of the Foreſt; and all ſuch who are convicted of deſtroying the *Vert*, or cutting down the Woods, Covert or Vert, within the Regard of the Foreſt, are to be committed and fined to the King, and bound to the Good Behaviour of the Foreſt.

17. 'Tis a general Rule, that for every Treſpaſs and Offence in the Foreſt, either in *Vert or Veniſon*, the Offender muſt be committed, fined and bound to his Good Behaviour of the Foreſt.

18. But this Puniſhment cannot be executed in every one of thoſe Particulars, but only by a judicial Sentence pronounced by the Chief Juſtice in Eyre of the Foreſt at his Juſtice Seat; in which Caſe the Party is always firſt convicted for the Offence, by a lawful Trial according to the Foreſt-Laws.

19. And all ſuch who are convicted of any *Common Nuſance* in the Foreſt, are to be committed,

ted, fined and bound to amend it by a certain Day; but not bound to the Good Behaviour of the Foreſt, for I find no Precedent for that in all the *Aſſiſes* of *Pickering* and *Lancaſter*; for Waſtes and Aſſarts of the Foreſt are comprehended in the Treſpaſſes of *Vert*; and therefore they, who are Offenders therein, are to be committed, fined and bound to the Good Behaviour of the Foreſt.

20. And all ſuch who are convicted of any *Purpreſtures* in the Foreſt are to be committed, fined and bound to pull down and deſtroy the ſame in a certain Time, or otherwiſe to pay a Yearly Rent to the King: But I do not find that any Man hath been bound to the Good Behaviour in the Foreſt for that Offence.

The difference between Nuſance at Common Law and Nuſance of the Foreſt.

21. *Nuſance*, at *Common Law*, is that which tends to the general hurt of the People, or elſe to the hurt of ſome particular Man; but *Nuſance* by the *Foreſt-Law* is that which tends to the hurt of the *Vert or Veniſon* in the Foreſt in any manner whatſoever.

22. So that what is a *Nuſance* at *Common Law*, is not ſo by the *Foreſt-Law*, except it likewiſe tends to the hurt of the Foreſt.

Offenders in Forests.

See { *Attachment*, per totum. *Chief Justice*, per totum. *Forester*, 14, 15, 16. *Outlawry*, per totum. *Purlieu*, 120. *Regarder*, 10.

BY the Assises and Customs of the Forest, made *Anno 6 Ed.* 1. *Artic.* 11. it appeareth, That every Inhabitant in the Forest must use his utmost Endeavour to apprehend Offenders in Forests; for the Words are, *viz. Si quis viderit aliquos malefactores infra metas forestæ aliquam feram capere vel asportare, debet illos capere secundum posse suum.*

2. And because every Inhabitant should be the more willing to put this Law in Execution, it is provided by the *Assises* of *H.* 2. call'd *The Assises of Woodstock*, *Artic.* 15. That every Man dwelling in the Forest shall be sworn to the Peace thereof, *viz. Item Rex præcipit quòd omnis homo habens ætatem duodecim annorum manens infra pacem venationis juret ejus pacem, ac Clerici laicum feodum habentes*; by which it appears that the Ancient Assises and Laws of the Forest are, That all the Inhabitants there must be sworn to keep the Peace of the Forest, and being sworn to keep the Peace himself, he ought not to suffer another to break it.

But the chiefest Care to take Offenders is incumbent on the Foresters; which if it cannot be done without some apparent Danger, then these Officers are to enquire out the Names and Habitations of the Offenders, and to present the same and the Offence at the next *Swanimote* or *Court*

of *Attachment*, and upon that Preſentment found and certified to the Chief Juſtice in Eyre by the Teſtimony of the *Verderors*, purſuant to the *Ordinances* of the Foreſt, made *Anno* 6 *Ed.* 1 *viz. Debet foreſtarius hoc intimare Juſticiario per teſtimonium Viridar.* he may iſſue out a Special Warrant to apprehend ſuch Offender in any Place in *England*, and to impriſon him till he put in Sureties to anſwer the Offence.

3. And likewiſe upon ſuch a Preſentment, the Offender may be out-lawed in Treſpaſs at the Suit of the King. This likewiſe appears, *Anno* 6 *Ed.* 1. *Artic.* 5. *Si quis attachiabilis fuerit, &c. debet diſtringi per catalla ſua infra metas foreſtæ inventa; ſin autem deficerent, corpus ejus detineatur quouſque fecerit quod debuerit, & ſi extra metas foreſtæ fuerit manens nomen ejus & villa unde ſit irrotulentur.*

4. *By the Statute of* 19 *H.* 7. *cap.* 11. 'tis enacted, If any Man *Stalk*, or cauſes any other to *Stalk*, with any *Buſh* or *Beaſt*, to any Deer in a Park, Chaſe or Warren, or without, except in his own Ground, without Licence of the Owner, or the Maſter of the Game, or Keeper of the Foreſt, Chaſe or Park, he ſhall forfeit for every Time ten Pounds to any Perſon who will ſue for the ſame by Action of Debt, *&c.*

5. This Statute is made in affirmance of the Common Law; ſo that the Law which was before is not abridged or taken away by it, and therefore ſuch *Offenders* may be proſecuted either at the *Common Law* or by this *Statute*.

6. Yet there are ſome Opinions that the Statute doth not extend to ſuch Offenders in the *King's Foreſts*, becauſe he hath a Chief Juſtice in Eyre, who by the Laws of this Realm hath an abſolute Authority to hear and determine all manner of Treſpaſſes for *hunting*, and all Offences againſt *Vert* and *Veniſon* done in any of his *Foreſts*; and

therefore this Statute was never intended to diminish his Authority, and to give Power to Justices of Peace to punish Offenders of this Nature.

7. 'Tis farther objected, That the Statute was made only for a more speedy remedy and redress of *Trespasses* done in the Forests, Parks and Chases of several *Subjects*, who were *Owners* thereof, and not of *Trespasses* in the *King's Forests*.

8. But we see by daily Experience, and by the Proceedings of the Justices of *Assise* in their several *Circuits*, that this Statute doth extend as well to the *King's Forests* as to those of his *Subjects*, because they assess Fines upon those who offend therein.

9 A Man must not enter the Forest in the *Night-time*; therefore if his Horse is pasturing there, and he enter in the *Night* and take out his Horse, he shall be imprisoned, ransomed and bound to the Good Behaviour of the Forest.

10. The like Punishment for him who enters the *King's Forest* with Bows and Arrows, with an intent to offend there, tho' he doth no Act; for by the *Assises* of the Forest, *Voluntas reputabitur pro facto*, *Itin. Pickering fo.* 3, 7.

11. One *Nicholas Melvill*, and several others, were indicted for that they, with Bows and Arrows and Dogs, had killed 43 Stags and Hinds in the Forest, and had set their Heads on Stakes; they were committed and grievously fined, and according to the Charter of the Forest, were bound to their Good Behaviour; and so they must have been if they had been pardoned. *Itin. Picker. fo.* 5.

12. In Trespasses in Forests all are *Principals*, for there are no *Accessaries*; and therefore he who *receiveth stoln Venison* shall be punished as a *Principal*. *Itin. Picker. fo.* 3.

13. Stripping or fleaing a Beast in the Forest, dead of the *Murrain*, is finable, if presented, and the Of-

Offender shall pay the Value of the Skin besides. *Assiz. Pick. fo.* 8.

14. In some cases Offenders in Forests may be guilty of *Felony*, as for instance; If a Forester hath killed a Deer, and leaves it in the Forest whilst he goes to his Lodge for a Horse, and in the mean time another Person carries it away; this is Felony, and the Offender is to suffer as in other cases of Felony.

15. *Anno* 12 *Assiz. Placito* 32. A Forester was indicted for feloniously *cutting down* and carrying away several Trees, but the Judges would not suffer him to be arraigned for Felony upon that Indictment, because the Trees which are growing are annexed to the Freehold, of which a Man cannot commit Felony; but if they had been cut down by the Owner, and then the Forester had carried them away, this had been Felony.

16. So if Pigeons are taken abroad, or Fishes in a River, this is not Felony; but if taken in a Pigeon House, or if the Fish are taken in a Trunk, with a felonious Intent, 'tis Felony. 22 *Assiz. Placito* 95. *Trin.* 12 *H* 8. *fo.* 3, 4.

17. So in 18 *H.* 8. *fo.* 2. *Placito* 11. If Apples, growing in an Orchard, or the Trees, are cut down and carried away, or Corn growing on the Ground is cut and carried away with a felonious Intent; this is not Felony, because, at the time of taking it, 'twas Parcel of the Freehold; but if the Apples had been gathered, or the Corn cut by the Owner, and afterwards carried away by another, this is Felony.

18. So if Deer are taken in a Forest, such taking is but a Trespass; but if killed by the Forester, and afterwards carried away by another, 'tis Felony.

19. As to these Cases of the Trees and Apples, *&c.* 'tis true the Law is so, but 'tis difficult to apprehend the Reason of it; for if a Man hath a

felonious Intention to steal Trees, and for that purpose unlawfully enters upon my Ground, and cuts them down, and afterwards carries them away; this seems to be one continued Act of Felony, begun by his unlawful Entry and cutting down, and accomplished by his carrying the Trees away when cut down.

20. 'Tis true, he would not commit Felony whilst they were actually growing on the Freehold, because it was impossible for him to remove them; but when once they were cut down (and to me it doth not seem material by whom) they were no longer any Parcel of the Freehold; 'tis the carrying them away which compleats the Felony, and not the cutting them down; but if cut down by the Felon, 'tis so far from extenuating, that I think 'tis an Aggravation of his Offence.

21. But to return, where Felony is committed in a Forest, *Hue and Cry* may pursue the Felon whersoever he goes, as after a Felon at Common Law, till he is apprehended; but 'tis a Question, if the Offence had been only a *Trespass*, whether the Forester could pursue him with Hue and Cry *out of the Boundaries of the Forest*, because the Words of *the Assise of the Forest*, *Anno* 6 *Ed.* 1. *Artic.* 11. are, *Si quis viderit aliquos malefactor' infra metas forestæ aliquam feram capere vel asportare, debet illos capere secundum posse suum, & si non possit, debet levare Hutesium & clamorem, & si non fecerit, remaneat in misericordia Regis.*

22. Now some are of Opinion, that this *Hue and Cry* is limited to be *within the Bounds of the Forest*, because, in the precedent Article of the same *Assises*, *viz. Artic.* 10. the Words are, *Si quis ceperit feram sine Warranto in foresta corpus suum arrestetur ubicunque inveniatur infra metas forestæ.*

23. Therefore, without the Bounds the Forester cannot apprehend him, unless he follow him with

fresh

freſh Purſuit in his *View*; ſo that if he cannot arreſt an Offender *without the Limits of the Foreſt*, by the ſame Reaſon he cannot purſue a Treſpaſſer with *Hue and Cry out of the Boundaries.*

24. Mr. Attorney *Noy*, *in Itinere Windſor*, affirmed, That in the Reign of *H.* 2. the Inhabitants of that part of the Foreſt next *Surrey*, were fined an Hundred Marks for burning Heath in it; for it diſturbeth and ſpoileth the Layer of the Deer, *Jones's Rep.* 276.

Officers in a Foreſt.

See { *Charge in Chief Juſtice*, 24. *Foreſts*, 31, 32.

1. THere are Six Sorts of neceſſary Officers in a Foreſt; *ſc.* A *Steward*, *Verderors*, *Foreſters*, *Regarders*, *Agiſtors* and *Woodwards.*

2. All Offences and Treſpaſſes in the Foreſt muſt be tried before theſe Officers, or by ſome of them, in thoſe Courts which they hold for the due Execution of the Foreſt-Laws.

3. But it may happen that there may be Foreſts which have not every one of thoſe Foreſters; for there are ſome Foreſts which have no Agiſtors, becauſe the King hath no Woods there to agiſt, but in every Foreſt where there are Woods, there muſt be Agiſtors.

4. Theſe Officers muſt duly attend their reſpective Offices, and each of them muſt execute his own Office, and no more; for if ſeveral Offices are in one Hand, they may be ſeiſed, and the Reaſon is, *Quia habet plurima officia quæ intendere non poteſt. Jones's Rep.* 266. And to prove this, Mr. Attorney

Noy

Noy told the Court, that he had seen several Precedents. *Jones's Rep.* 295.

5. Therefore, if a *Forester*, or *Bailiff*, or *Keeper* of several Walks, hath afterwards the Office of a *Verderor*, all his other Offices are void, and may be seised, because they are all subordinate to the Office of a Verderor; and by the Acceptance of that Office the other are determined; like *Blage's* Case, who being a Remembrancer in the Exchequer, was afterwards made one of the Barons, and it was resolved, that his Office of Remembrancer was determined.

5. It is to be inquired how Officers have used their Offices; for there is a Trust implied in the Grant of an Office, *viz.* That the Grantee should use it well: Now if he hath broken that Trust, 'tis a Forfeiture of the Office, as if a *Woodward* hath fell'd Wood for his private Use; so that, by Law, there is a tacit Condition annexed to their Estates. *Jones's Rep.* 272.

6. If a Man claim the Office of a Keeper, and do not claim any Fees for the Execution thereof, this is but an Office of Burthen, and he is removeable at Will; and therefore, in most Grants of Offices, tis *Una cum vadis & feodis eidem spectan.* And though there are no certain Fees expressed by those Words, yet in his Claim he must averr some certain Fees due to him, or else his Claim is not good. *Jones's Rep.* 292.

Officers of the Forest as they have been returned by the Sheriff upon a Writ of Summons, to the Justice-Seat. Coke, 4 Inst. 310.

'EDwardus Dei gratiâ Rex Angliæ, Dominus 'Hiberniæ, & Dux Aquitaniæ, Vic' Ebor' 'salutem. Summon' per bonos summonitores 'Archiepiscopos, Episcopos, Abbates, Priores,

'Co-

'Comites, Barones, Milites, & omnes liberè te-
'nentes qui terras seu tenementa habent infra me-
'tas Forestæ dilecti consanguinei & fidelis nostri
'Henrici Com' Lancastr' de Pickering in Com'
'præd' & de qualibet villa ejusdem Com' infra me-
'tas forestæ dilecti consanguinei & fidelis nostri
'Henrici Com' Lancastr' de Pickering in Com'
'præd' & de qualibet villa ejusdem Com' infra
'metas ejusdem forestæ existen' quatuor homines
'& præpositum & forestar. villarum & omnes alios
'qui coram Justiciariis ad placita forestæ venire so-
'lent & debent, quòd sint apud Pickering die Lu-
'næ prox' post Festum Sancti Michaelis prox' fu-
'tur' coram dilectis & fidelibus nostris Richardo
'de Willoughby, Jo. de Shardelow, Roberto de
'Hungerford, & Johanne de Hambury, tribus vel
'duobus eorum, quos ad requisitionem dicti con-
'sanguinei nostri constituimus Justiciarios ad
'itinerand' hac vice ad placita Forestæ ipsius Co-
'mitis in Com' præd' à tempore quo Edmundus
'nuper Com' Lanc', Pater prædicti Henrici, cu-
'jus hæres ipse est, placita forestæ in eadem fo-
'resta virtute concessionis sibi per Dominum Ed-
'wardum nuper Regem Angliæ, Avum nostrum,
'inde factum ultimum tenuit auditur' & factur'
'præceptum nostrum, iis quæ ad placita prædict'
'pertinen. Facias etiam venire coram Justiciar'
'prædict' omnes Forestarios & Viridarios forestæ
'prædict' in Com' præd post ultima placita præ-
'dict' cum omnibus attach' suis, tam de viridi
'quàm de venatione, quæ post ult' placita forestæ
'emersa & nondum terminat', viz. tam de attachi-
'amentis quæ manent infra metas forestæ quàm de
'illis quæ manent extra forestam. Facias etiam ve-
'nire coram eisdem Justiciariis, tribus vel duobus
'eorum, Regardatores ipsius Comitis in balliva
'tua. Ita quòd habeant ibi omnia Regarda sua
'sigillis suis signat' & omnes Agistatores præfati

'Com'

' Com' in eadem balliva ſua cum omnibus At-
' tachiamentis: Et habeas ibi ſummon' & hoc Breve.
' Teſte meipſo apud Weſtm' 17 die Auguſti Anno
' regni noſtri octavo.

The Return.

' Ad quod Breve Petrus de Saltmarſh, Vic'
' Ebor' retornavit quòd fecit plenum retornum
' iſtius brevis Hugoni de Nevill ballivo libertatis
' Henrici Comitis Lancaſtr' honoris de Pickering,
' cui executio iſtius Brevis reſtat faciend', qui ſibi
' reſpond' quòd ſummoniri fecit Archiepiſcopos,
' Epiſcopos, Abbates, Priores, Comites, Barones,
' Milites, & omnes liberè tenentes qui terras &
' tenementa habent infra metas foreſtæ & qualibet
' villâ ejuſdem foreſtæ exiſten' quatuor homines &
' præpoſit' & foreſtar' & villar' & omnes alios qui
' coram Juſticiar' ad placita venire ſolent & debent,
' quòd ſint apud Pickering ad diem in Brevi præ-
' dict' content' coram præfat Juſticiariis tribus vel
' duobus eorum auditur' & factur' præcept' Domi-
' ni Regis de iis quæ ad prædict' placita pertinent.
' Et quod venire fecit Foreſtarios, Viridarios, &
' omnes illos qui fuerunt Foreſtarii & Viridarii Fo-
' reſtæ præd' in balliva ſua poſt ultima placita præd'
' cum omnibus attachiamentis prædict' tam de vi-
' ridi quàm de venatione, quæ poſt ultima placita
' Foreſtæ ſunt emerſa & nondum terminata. Et
' etiam quòd venire fecit coram eiſdem Juſticiariis
' tribus vel duobus eorum Regardatores ipſius Co-
' mitis in balliva ſua ita quòd haberent ibi omnia
' Regarda ſua ſigillis ſuis ſignat' & omnes agiſtato-
' res præfat' Comitis in eadem balliva ſua cum
' omnibus Agiſtamentis prout patet in retorn' Sche-
' dulæ ſuo præd' attachiata.

Fo-

Foreſtarii de feodo in le Weſtward iſtius Foreſtæ de Pickering.

- *Willielmus de Percehay Miles.*
- *Petronilla de Kynthorpe, quæ poſuit loco ſuo Edmundum de Haſtings ad omnia faciend' quæ Foreſtar. incumbunt durante itinere & fecit Sacramentum.*

Foreſtarii Cuſtod' Foreſtæ in le Eaſtward.

- *Rogerus de Leiceſter.*
- *Hugo de Teland.*
- *Willielmus de Parker.*

A Woman may be a Foreſter in Fee, but ſhe cannot execute the Office, as may be ſeen by this Return; but ſhe may make a *Deputy* during the Eyre, which Deputy ſhall be ſworn.

Viridarii Foreſtæ de Pickering.

- *Robertus Thurneſe.*
- *Rogerus Brown.*
- *Robertus Playce.*
- *Johannes de Kilwardbye.*

Regardatores Foreſtæ de Pickering.

- *Willielmus de Everley.*
- *Rogerus de Long.*
- *Johannes Boye.*
- *Johannes Filius Alani.*
- *Galfridus de Knithorpe.*
- *Thomas Thurneſe.*
- *Hugo de Nevil.*
- *Rogerus de Alveſton.*
- *Johannes Filius Gladford.*
- *Rogerus de Stapleton.*
- *Rogerus Strutcock.*
- *Radulphus de Collonghton.*
- *Johannes de la Chemne.*

By this Return it appears there were *Thirteen Regarders* then of the Foreſt of *Pickering*, which are

are more than required by *the Charter of the Forest Cap.* 7. where 'tis prohibited to make any Gathering but upon the Sight and upon the Oath of *Twelve Regarders*; which Number is necessary in every Forest.

Agistatores in le West-ward.	*Johannes Dring.* *Richardus Russell.*
Agistatores in le East-ward.	*Willielmus de Roston.* *Willielmus Russell.*

Nomina Forestariorum istius Forestæ & eorum qui fuerunt Forestar' istius Forestæ, & eorum qui fuerunt viridarii istius Forestæ.

Capital. Forestar. Willielmi de Percehay, unius Forestar' de feodo Forestæ de Pick' in le Westward, ibidem.	*Alanus de Newton.* *Johannes de Wardesden.*
Capital' Forestar' Petronillæ de Kynthorpe alterius Forestar' de feodo Forestæ de Pickering.	*Henry de Ripley.* *Thomas de Dalby.*
Capital' Forestar' Hugon' de Yealand Forest' Custodis Forestæ in le Eastward.	*David de Newton.* *Thomas de Ripley.*

Nomina Subforestariorum Forestæ prædict.

Forestarii Radulphi de Hastings, Custod' Forestæ præd.	*Johannes de Harley.* *Richardus de Aleintofetes.* *Willielmus Gower.* *Richardus de Halmesley.* *Johannes Munmewe.* *Johannes Scot.* *Willielmus Courtnan.*

Nomina Subforeſtariorum qui fuerunt in Foreſta illa poſt ultimum iter'.

Galfridus de Hawley.	*Alanus fil. Radulphi.*
Robertus de Wigan.	*Adamus fil. Willielmi.*
Petrus Lilly.	*Johannes de Nevill.*
Johannes Rouceby.	*Thomas de Newton.*
Rogerus fil. Nicb.	

Beſides the Officers before mentioned, there is one called *Cuſtos Totius Foreſtæ*, and another *Superviſor Foreſtariorum, quod nota*; the *Cuſtos* is mentioned in the Statute of 1 *Ed.* 3. *cap.* 3.

The Names of the Officers of the Foreſt of *Lancaſter: Willielmus Blount, Cuſtos totius Foreſtæ & ſeneſchallus; Robertus de Ratcliff, Magiſter Foreſtarius; Willielmus de Holland, Superviſor Foreſtariorum totius Foreſtæ; Johannes Babridge, Foreſtarius de feodo in warda de Lonſdale.*

Robertus Fowcher nunc Cuſtos iſtius Foreſtæ venit, &c. et illo amoto Willielmus de Clapham juratus eſt, & efficitur' Cuſtos ejuſdem Foreſtæ.

Outlawry.

See { *Preſentment*, 7. *Swanimote*, 24.

1. OFfenders in Foreſts may be proſecuted by way of *Outlawry*, *viz.* If a Man is indicted for any Offence done there, who lives in another County, and *out* of the Foreſt, ſo that he cannot be taken by the Foreſters; in ſuch Caſe the Offender may be *outlaw'd*, and the Proceedings againſt him are the ſame as at Common Law; that

that is, Proclamation must be made at five several County Courts; and after the *quinquies exact.* the *Coroner* gives Judgment for his Contempt in not appearing, so that he who is five Times proclaimed, and doth not appear, shall be out of the King's Peace, and by consequence an *Outlaw*, and then the Person is absolutely outlawed. *Fleetwood fo.* 8. *Hesket fo.* 16.

2. The Law is the same *per Assisam foreſtæ*, for he who is to be outlawed for any Offence in the Forest must be proclaimed in the same manner as at Common Law; and when he is *quinquies exact.* he is fully outlawed; and by vertue of that *Outlawry* his Goods and Chattels are forfeited to the King, and the *Profits* of his Lands by the *Inquisition* of the Sheriff and the Coroner.

3. If a Man is outlawed for an *Offence* either in the *Vert* or *Venison*, and afterwards taken by a *Capias utlagatum*, he shall be committed without *Bail*, to remain in Prison until delivered by a special Warrant from the King, or from the Chief Justice in Eyre, or Chief Warden of the *Forest*.

Parks in Forests.

See { *Charge in Chief Justice*, 15. *Forests*, 38, 39. *Forester*, 11. *Inclosures*, 5, 8. *Appendix, Trespass in Parks.*

1. IN many Forests, those are Parks which the Owners claim, either by *Grant* from the King or *Prescription*: Such Parks must be stored with *Game*, and the Woods must be preserved, and the *Pales* be kept, so that there are no *Inleaps* for the Deer. And

And if a Subject is Owner of a Forest, he may give Licence to another to make and enclose a Park within the Meets of his *Forests*, and to hold the same so enclosed, with all such *Venison* as the *Grantee* shall put in, to him and his Heirs. And this was adjudged a good *Licence* in a Claim made in Eyre. But if such a *Park* is so slightly enclosed and fenced, that the *wild Beasts* of the Forest do enter, in such Case the Lord of the Forest may enter and hunt there at his pleasure. *Assiz. Fickering fo.* 64.

2. The Owners of those *Parks* may divide any competent parcel thereof with Rails, Pales or Hedge, for the feeding the *Game* in *Winter*, and he who hath the Herbage cannot put any Cattle therein.

3. In a *Quo Warranto*, for that the Defendant, amongst other Things, did without Warrant use a Park with a Pale, Ditch and Hedge enclosed in the *King's Forest*, *&c.*

4. The Defendant prescribed, That *John Byron*, and all those whose Estate he had, were seised in Fee of seven hundred Acres, *&c.* and have accustomed to have therein, *&c.* Hedging, Ditching and Inclosing at their Will and Pleasure, with all Liberties, Privileges and Franchises to a Park belonging, and have used to keep Deer therein, and to appoint a Keeper, *&c.* to look after them, *Ac ad venandum, fugandum occidendum, capiendum & asportandum omnes & omnimodas Damas in eodem parco de tempore in tempus existentes, ita quòd nullus forestarius Domini Regis forestæ prædi nec aliquæ aliæ personæ quæcunque intromittantur ad venandum & fugandum in parco prædi sine licentia prædi Johannis*, and so derives a Title to himself, *&c.*

5. In the Argument in this Case it was admitted, that a Man may have a *Park* in a Forest, either by *Prescription* or *Grant*: But then it must be so *inclosed*,

that the Beasts of the Forest cannot enter, for if there is any Deer-leap, or if the Park is not kept enclosed 'tis a Forfeiture of the Liberties thereof.

6. But it was argued, That the Defendant could not *prescribe* in such manner to have a *Park*, because 'tis contrary to the Nature of the Royal Franchise of the Forest, and tends to the destruction thereof; for 'tis not only *ad magnum nocumentum forestæ*, but to the destruction of all; for they are subject to be destroyed by the Defendant, because no Person whatsoever is to enter into his Park, besides himself or his Keepers.

7. If 'tis objected that this Park, claimed by the Defendant, is but a little part of the Forest, that will not be material; for if the Defendant may *prescribe* to have such an irregular Park in part of the Forest, other Men may make the like *Prescriptions* in other parts thereof; and so the King may lose all the Franchise of his Forest.

8. Besides, the Defendant may make his Fence or Ditch *very low* on the outside next the *Forest*, and *so high* within his Park, that the King's Deer cannot get out when they are once within, and so the Park would be in the nature of a *Trap* to catch them.

9. Neither hath the King so much Power in this *Land*, being in the midst of his *Forest*, as he hath in the *Lands* of any of his *Subjects* lying out of it; for if the Beasts of the *Forest* stray into the *Lands* of any *Subject*, the Foresters may lawfully enter those Lands and drive them back again. *Bridgman's Rep.* Sir *John Byron's* Case.

10. In the Reign of King *James* I. some Questions being moved between the Earl of *Nottingham*, Justice in Eyre of all the King's Forests, and the Earl of *Dorset*, then Lord *Treasurer*, concerning those Forests; the Judges of *England* were assembled, and upon Conference they resolved,

That he who hath the Herbage or Pannage of a Park by the *Grant* of the King or of any other Perſon, cannot take ſuch Herbage or Pannage, but what is Surpluſage and above the competent and ſufficient Paſture and Feeding for the *Game*; and if the Owner of the *Game* ſuffer them to encreaſe, ſo that there is no Surpluſage, then he who hath the Herbage and Pannage cannot put any Beaſt into the *Park*.

11. That the Owner of ſuch *Park* may divide any competent parcel thereof with Rail, Pale or Hedge, to feed the *Game* in *Winter*, and he who hath the Herbage cannot put any Beaſt therein.

12. If the Paſture and Pannage of a *Park* be not ſufficient to feed the Deer in *Winter* and *Summer*, the Owner thereof may drive out the Beaſts of him who hath the Herbage and Pannage. *Rot. Parl.* 18 *Ed.* 1. *fo.* 16.

Pannage.

See { *Agiſtment*, 33. / *Charge in Chief Juſtice*, 58. / *Common*, 33, 35. / *Appendix*, Charta Foreſtæ, 9. / *Appendix*, Aſſiſa Foreſtæ, 13.

1. THE *Latine* Word *Pannagium* is derived from *Panegyris*, in *Engliſh Pannage*, which is a gathering of Money, or the Profits made of the Fruits of Trees. 'Tis true, the *Latiniſts* expreſs all manner of Fruits by the Word *Fruges*; but the Common Lawyers and Civilians do uſe the Word *Pannagium*, for the Maſt of ſuch Trees only, which bear Fruit to feed Hogs, or elſe for the Money made of ſuch Maſt; and therefore it differs from

Agiſtment, for that is the Herbage of any Ground or the Profit made thereof; but *Pannage* is the *Agiſtment* of the *Maſt* of Trees, or the Money paid for the ſame.)

2. The Word is often taken in the Senſe before-mentioned, but *Pannage* is properly the Money received for the *Agiſtment* of the *Maſt*. This appears by *Charta Foreſtæ*, *Artic.* 8. *viz.* *Quando Agiſtatores noſtri debent recipere pannagium noſtrum, &c.* And in the ſame Article, *& habeat pannagium ſuum*, where by the Word *Pannagium* is underſtood *Money* for agiſting the Wood, or the Profit of the Maſt, *viz.* the Money received for the ſame.

3. So in *Aſſiſa Foreſtæ*, *Artic.* 14. *viz.* *Quòd deinceps capiatur pro quolibet porco quantum poteſt ad opus Domini Regis pro pannagio (i. e.)* the Money which is due for the Maſt.

4. *Heskct*, *fo.* 48. is of the ſame Opinion, *viz.* That *Pannage* is not properly the *Agiſtment* or *Maſt* of the Hogs, but the *Money* or *Profit* which is due and ought to be paid for the ſame: And he cites a Caſe adjudged in the Reign of *Ed.* 1. where an Action of Treſpaſs was brought againſt the Defendant for entering into his Park, and eating up his *Pannage* with his Cattle: And the Writ was abated, becauſe it was for eating his *Pannage*, when it ought to have been for eating of his *Maſt*; for *Pannage* is only the *Money* paid for the *Maſt*, and not the *Maſt* it ſelf.

Quære of this Caſe, for I can find no ſuch Caſe reported.

5. In the Book of *Entries*, *fo.* 595, *Treſpaſs in Pannagio*, it appears that an Action of Treſpaſs was brought againſt the Biſhop of *Litchfield* and *Coventry*, for taking and driving away certain Hogs, *&c.*

6. The *Biſhop* pleaded, That he was ſeiſed of a *Chaſe* in right of his Biſhoprick, *&c.* in which

there was a great Wood, and that the Hogs were found there agisting the *Mast*, and then prescribes that he and all his Predecessors, *&c.* used to have the *Pannage* of the said Wood, *viz. unum denarium de pannagio cujuslibet porci tempore fugationis in eadem chasea proinde, &c.* And for the levying thereof, he and all his Predecessors, *&c.* had yearly, between *Michaelmas* and *Christmas*, driven the Hogs, then being in the said Chase, to some convenient place to pound and detain them, until he was paid the *Pannage* thereof, and so justifieth the taking, *&c.*

7. So that in this Case the Word *Pannagium* is rather taken for the *Money* or *Profit* made of the *Mast* or *Agistment* of the Wood, than the *Mast* or *Agistment* it self.

8. But in the same Book of *Entries, fo.* 605. Tit. *Toll.* there is a Case, where the Word may be indifferently taken in either Sense, *viz. A Prior and Convent* pleaded a Grant from the King to be quit *de pannagio*: There the Word *Pannagium* is understood to be discharged of payment of *Money* for *Pannage*, and may also be understood to be discharged of *feeding Hogs with Mast.*

9. So in the same Book, Tit. *Assis. fo.* 75. *in Offices*; the Tenant pleaded a *Grant* from the King to keep a Park and to have Profits of the Woods there, and also the *Pannage*: The Words of the *Grant* are, *viz. Necnon pro quolibet porco in eodem parco ad pannagium posito pro eodem pannagio unum quadrantem.* There the Word *Pannagium* is rather understood for the feeding Hogs with *Mast*, than the *Money* for the same, and yet it may very well be taken for either,

40. In *Lynwood's Provincial Constitutions de pannagiis*, amongst the Tithes of Woods and wild Fruits, he mentions *pannagia syluarum*, the *Mast* of Beech and Oak, or such like; and tells us, if 'tis

ſold, then the Owner of the Woods muſt pay the Tenth Penny, *de pannagiis ſilvarum:* Here the Word *Pannagium* is underſtood properly for the Money paid for the Maſt, but may likewiſe be taken for the Maſt it ſelf.

Of the Time of Pannage in the King's Woods, *and who is to receive it.*

11. The Time of *Pannage* in the *King's Woods*, begins on *Holy-Rood-Day*, which is fifteen Days before *Michaelmas*: This appears *in Charta Foreſtæ, Artic.* 8. *viz. Quando Agiſtatores noſtri conveniunt ad agiſtandum Dominicos Boſcos noſtros, &c.* and it ends forty Days after *Michaelmas*, that is about the Feaſt of St. *Martin* the Biſhop, *Quando Agiſtatores noſtri debent recipere pannagium noſtrum:* By which laſt Clauſe it appeareth, that the Agiſtors are to receive the *Pannage*; for tho' they ought not to agiſt the Woods without the Privity and Conſent of the *Foreſters* and *Verderors*; yet they only are chargeable for the *Pannage*; which appears likewiſe in the Entries in the Records and Aſſiſes and Iters of *Pickering* and *Lancaſter, &c.*

Of the Times of Pannage of other Men's Woods *in the Foreſt, and who is to receive it.*

12. The Freeholders, and all other Men who have Woods and Lands within the regard of the Foreſt, may agiſt the ſame at convenient Times when the Maſt is ripe, for tho' by the Aſſiſes of *Woodſtock* Artic. 4. it was appointed, *Quod nullus agiſtet Boſcos ſuos infra metas foreſtæ*, before the King's Woods were agiſted; yet that Law is altered by *Charta foreſtæ, Artic.* 9. made long after the *Aſſiſes* of *Woodſtock*, *viz. Unuſquiſque liber homo agiſtet*

agiſtet boſcum ſuum in foreſta pro voluntate & habeat pannagium ſuum.

13. So that now Men may agiſt their own Woods at any Time *tempore pannagii*, when there is Maſt; but when there is none, they muſt not put their Hogs there.

14. But they cannot agiſt all their Woods at all Times when there is Maſt, for they are prohibited by the *Aſſiſes* of the Foreſt, made *Anno 6 Ed.* 1. *Raſt. Foreſt.* 21. The Words are, *viz.* If any Man hath Woods lying within the Foreſt near the *King's Woods*, the Owners may not agiſt them till the King's Woods are agiſted.

15. So that now the Law is, *viz.* Every Freeholder who hath any Woods or Hedge-rows within the Regard of the Foreſt, may agiſt them and take the *Pannage* thereof at any time *tempore pannagii*, excepting only ſuch Woods and Hedge-rows which lie near the *King's Woods*; and thoſe muſt not be agiſted till the *King's Woods* are agiſted, which will be about the Feaſt of St. *Martin* the Biſhop, as aforeſaid.

16. By the aforeſaid Words *in Charta foreſtæ, viz. Unuſquiſque liber homo agiſtet boſcum ſuum*, the *Freeholder* is not confined to agiſt his Woods with his *own Hogs*, but he may agiſt them with the Hogs of other Men; for the Copulative *& habeat pannagium ſuum*, imports, that he may agiſt them with ſuch Hogs, and take the *Pannage* thereof, that is, the Money for the *Pannage*.

17. This is likewiſe proved by the Aſſiſes and Cuſtoms of the Foreſt, *Anno 6 Ed.* 1. *Artic.* 15. *viz. Et hoc fiat de exitu porcorum*; that is, This may may be done of the Profit of the Hogs; ſo that a Man may agiſt his Woods himſelf, and may likewiſe take and receive the *Pannage* of them by the agiſting the Hogs of other Men; and this Liberty

is given to them by *the Charter of the Foreſt*, for it was otherwiſe before.

18. It was admitted and adjudged in the Claim of one *Lambeſon*, *Itin. Pick. fo.* 16. That to be quit of Pannage, *tempore pannagii*, might be *appurtenant* to a Man's Freehold, that is, it may be by *Preſcription* appurtenant to Lands.

19. At every Juſtice-Seat, the Profit of Pannage muſt be preſented, and likewiſe the Profit of Ruſhes, Fern, Gorſe, Sedge, and ſuch like. *Itin. Lanc. fo.* 8.

Preſcription.

See *Common*, 14, 27, 28, 29, 36, 48.
Dogs, 14.
Eſtovers, 6, 7.
Foreſter, 41, 42.
Park, 6.
Pannage, 18.
Purlieu, 100.
Warrant, 1.
Warren, 4.
Woods, 5, 13, 18.

1. THE Form of a Preſcription in the Foreſt, differs from a Preſcription at Common-Law; for a Claim that he and his Anceſtors, *tempore quo*, is good, without ſaying, that he and his Anceſtors, and *all thoſe whoſe Eſtate he hath* in certain Lands.

2. A Man cannot preſcribe to fell *Wood* in a Foreſt, without the View of the Foreſters, unleſs it be upon an Allowance in Eyre; and even in ſuch Caſe it muſt be intended there was a *Charter*, upon which the firſt Allowance was made. *Jones's Rep.* 271.

3. Nei-

3. Neither is a Preſcription good to ſell Wood *per viſum Foreſtariorum & Viridariorum*; it ought to be *per viſum & allocationem Foreſtariorum & Viridariorum*; for if it ſhould be good *per viſum, &c.* only, then if the Foreſters and Verderors are required to come and view it, and they refuſe or neglect to come, the Perſon may cut it without View.

4. This is the Opinion of ſome; but it ſeems contrary to Sir *Thomas Palmer*'s Caſe, 5 *Rep.* 25. where my Lord *Coke* tells us, There is no manner of Difference between a Preſcription *per Viſum, &c.* only, and *per viſum & allocationem, &c.* for upon a Requeſt and Refuſal the Party may take the Wood without View. *Jones*'s *Rep.* 276.

5. In the Caſe of the Tenants of the Manor of *Bray*, *Jones*'s *Rep.* 289. They preſcribed to ſell their Woods at Pleaſure, *without View of the Foreſters*, and to have Common of Paſture. Mr. Attorney *Noy* argued, That ſince the Statutes of *Charta Foreſtæ*, and *Conſuetudines & Aſſiſæ Foreſtæ*, a Man cannot preſcribe to do Waſte, or make Aſſarts, or cut the Wood *without View*; for by *Cap.* 4. 'tis ordain'd, *Quod liberatio de Houſebote & Haybote, fiat prout Boſcus pati poteſt in Statu quo eſt, & non ad exigentiam petentis, nec poteſt aliquis dare vel vendere de Boſco ſuo ſine licentiâ Domini Regis.*

6. It was argued for the Tenants, That, notwithſtanding thoſe Statutes, the *Preſcription* was good; for there is a Difference between a Negative Statute, which is only *declaratory* of the Common-Law, and a Negative Statute which is *introductory* of a new Law. *Co. Lit.* 115.

7. Againſt the laſt no *Preſcription* is good; but 'tis otherwiſe where a Negative Statute is declaratory of the old Law; for in ſuch caſe, no Alteration is made of the Law, and therefore a Preſcription may be good notwithſtanding ſuch Statute.

8. And

8. And for this Reason a Man may prescribe to hold a Leet more than *twice* in a Year, though the Statute of *Magna Charta* is Negative, *viz.* that a Leet be *only* holden *twice*, *&c.*

9. And they cited a Case in 8 *Ed.* 3. *in Lein. Pick.* where *Thomas Wake* of *Lydham* prescribed to cut Wood without View, *&c.* and Issue was joined upon the Prescription.

10. And so are the Cases of *Gilbert Aston* and *Henry Piercy*, there adjudged on Issues joined upon the like *Prescriptions*, and afterwards allowed in the King's Bench.

11. And in *Hill.* 19 *Ed.* 1. *Rot.* 58. in a Case between a Prebend of *Chichester*, and the Earl of *Arundel*, Issue was joined upon the like Prescription; and *Anno* 6 *Eliz.* in another Case reported by the Chief Justice *Popham*, That a Prescription to cut down Wood *without View*, *&c.* was good.

12. To which it was answered, by *Noy* Attorney-General, first by denying the Difference taken by my Lord *Coke*, between a *Negative Statute introductory of a new Law*, and where 'tis *declaratory* of the old Law; for the Statute *de Sylvâ cædud* is only *declaratory* of the old Law, and 'tis a Negative Statute; and yet a Prescription to have Tithes of Timber is not good.

13. As for the Case in *Hill.* 19 *Ed.* 1. and the Statute *Consuetudines & Assisæ Forestæ*, the one was of *Chases*, and the other of *Forests*; and he agreed, That a Prescription to cut down Wood in *Chases*, *without View*, was good: And so was the Case cited by my Lord *Popham*, for it was in a *Chase* of which the King was seised in Right of his Dutchy of *Lancaster*.

14. And as for *Piercy*'s Case, it did not concern the Case now in Question; for it was a Prescription to fell Woods in the *King's Forest*, without *View*, *&c.* But the Forest of *Pickering* was not then in

in the Hands of King; for *H.* 3. gave it to his Son *Edmund* Duke of *Lancaſter*; ſo that it was out of the Crown and in the Poſſeſſion of a Subject, when the Statute *de Conſuetudinibus & Aſſiſ. foreſtæ* was made; ſo that whatever a Man could preſcribe for in that Foreſt, before the making that Statute, he might ſtill preſcribe for the ſame after 'twas made.

15. Therefore, excepting only in that Caſe of *Ed.* 1. in the Foreſt of *Pickering* aforeſaid, and in the Caſes of *Chaſes*, it cannot be ſhew'd, that ever a Preſcription to fell *Wood* in the *King's Foreſts, without View of the Foreſters*, was held good.

16. A Man cannot preſcribe to have *Strays* in groſs; but a Preſcription may be good for *Strays, Tanquam ad manerium de C. pertinen.* *Jones's Rep.* 283.

17. A Preſcription to *hunt* in a *Purlieu* is not good, becauſe a *Purlieu* itſelf cannot be by Preſcription. *Jones's Rep.* 278.

18. But a Preſcription for Houſebote and Haybote is good, becauſe thoſe are Things which muſt neceſſarily be had; and it may not be convenient at all times to look after the Foreſters. *Jones's Rep.* 271.

19. A Preſcription to have *Common* is good, without an Allowance in Eyre; becauſe 'tis an equitable Preſcription, and in the nature of a Common Right; for ſince the Deer have fed on my Grounds, 'tis reaſonable I ſhould have Common in the Foreſt.

20. But generally a Man cannot preſcribe to any thing which goes to the Deſtruction of the *Vert* or *Veniſon*, without an Allowance in Eyre. *Jones's Rep.* 291.

21. A Man cannot preſcribe to a *Warren* in a Foreſt, but if ſuch Preſcription hath been allowed in Eyre, 'tis good. And this was Sir *Richard Harriſon's*

riſon's Caſe, *Jones's Rep.* 272, 280. But this ſeems contrary to the caſe of *Strata Marcella*, 9 *Rep.* wherein it appeareth, That if any thing be claimed by Charter, leaving out, *before time of Memory*, tis not good, without an Allowance, in Time of Memory: But if Liberties be claimed by Charter ſince Time of Memory, or by Preſcription, they need no Allowance; for, by the ſame Reaſon I might preſcribe 300 Years ago, I may preſcribe now.

22. But in 2 *Rep.* 155. it was adjudged, That a Man may preſcribe to a *Warren*, or to keep Sheep in a Foreſt, although in the King's Hands, but it muſt be by a Special Preſcription.

23. And in ſuch Caſe of Preſcription for *Warren*, though it hath not been uſed for ſeveral Years, yet a *Non-uſer* of *Fairs*, *Markets*, *Courts*, or ſuch like Liberties, wherein the Subjects have an Intereſt either for their common Profit, or for the Adminiſtration of Juſtice, is a good Cauſe of *Seiſure*; but the *Non-uſer* of *Parks* or *Warrens*, which are only for the *Profit* or *Pleaſure* of the Owner, is neither a Cauſe of Seiſure or Forfeiture.

24. And in this Caſe my Lord *Coke* cited the Lord *Hatton's* Caſe, which was adjudg'd in *B. R. Anno* 18 *Ed.* 1. upon a Demurrer, *viz.* That one might preſcribe to cut down Woods in a Foreſt, though it was in the King's Hands; which *Popham*, Chief Juſtice, affirm'd, but ſaid, That not long after it was adjudged *otherwiſe* in the *Exchequer*.

25. *Continual Uſage* is the Strength and Support of all *Cuſtoms* and *Preſcriptions*; and therefore to *preſcribe*, that he and all thoſe, *&c. poterint ſuccidere arbores, &c.* is not good, without laying an *actual Uſage*; for a Man may do a Thing unlawfully, and be puniſhed for doing it, *Jones's Rep.* 291. And therefore, *Anno* 21 *Ed.* 4. *fo.* 28. the Defendant pleaded a *Cuſtom, &c.* to turn his Ploughs on his Neighbour's Headlands; and it was adjudged not

not good, without laying an *Usage*: And as to this Matter, there is a Difference between a *Customreal*, which concerns Lands, and other Customs; for where a Custom was pleaded, That within such a Borough, *quilibet, &c. potest legare tenementa sua*, 'tis good, without laying an *Usage*; but 'tis otherwise of other *Customs*.

Presentments.

See { *Dogs*, 53, 54, 57, 58, 59. *Regarder*, 53. *Waste*, 14. *Appendix*, Assisa Forestæ, 23. *Appendix*, Ordinatio Forestæ, 1.

1. MOst Presentments for Offences in Forests, are made by the *Foresters*, in the Court of *Attachments*, before the Verderors, and usually in this Form:

2. ff. *Ad istam Curiam Attachiamenti Dominæ Reginæ forestæ suæ de Waltham in Com' Essex tent. apud Chigwell in eodem Com' nono die Julii, Anno regni Dom' nostri Eliz. Dei Gratia, Angliæ, Franciæ, & Hiberniæ Reginæ, Fidei Defensoris, &c. primo.*

3. *Johannes Matthews forestarius jurat. de Warda de Woodford infra forestam illam præsentat, quòd Johannes West de Chinkford in Com' Essex, Yeoman, nono die Julii, Anno regni, &c. primo; intravit forestam illam cum arcubus & sagittis & ibidem in quodam loco vocat' Woodford Mead infra forestam præd versavit unam damam ad mortem & carnes cepit, & fecit inde voluntatem suam.*

4. This Presentment being made in the Court of *Attachments* before the *Verderors*, and inrolled by them in the Rolls of the Forest, must be by them transf-

transmitted to the Court of *Swanimote*; for the Court of Attachments cannot proceed to Conviction: But the Offender may traverse such Presentment before it comes to the *Swanimote*, but not after.

5. After 'tis transmitted thither, then they may proceed to Tryal and Conviction, but that Court cannot determine the Offence, or assess any Fine, or give any Judgment; but the Conviction must be certified by that Court to the Chief Justice in Eyre, at the next Justice-Seat, and so must all the Proceedings in those Courts; for this is according to *the Ordinance of the Forest*, *Artic.* 1. made *Anno* 34. *Ed.* 1. and according to *the Assises and Customs of the Forest*, made *Anno* 6. *Ed.* 1. *Artic.* 19. and according to *Charta de foresta*, *Artic.* 16. *viz. Et ea Presentet Viridariis Provinciarum, & cùm irrotulata fuerint & sub sigillis viridariorum inclusa presententur capitalibus Justiciariis nostris de foresta cum in partes illas venerint ad tenenda placita de foresta, & coram eis terminentur.* So that it belongeth to the Lord Chief Justice in Eyre, at the High Court of Justice-Seat, or General Sessions of the Forest, to give Judgment for all Offences, and to assess the Fines, and to punish Offenders; but he can do nothing but upon the Presentments and Convictions in the other Courts. 2 *Bulst.* 297.

6. At every Court of *Swanimote*, all the *Presentments* of the Foresters for any Offence in the Forest, either in *Vert* or *Venison*, are delivered to the Jury, who are there sworn to inquire of the Truth thereof; and if they find the Presentments to be true, then the Offenders stand convicted thereof in Law; and they are not allowed by *the Assises of the Forest*, to *traverse* the same: And so is my Lord *Coke*'s Opinion, 4 *Inst.* 290. *viz.* That an Indictment in the *Swanimote* is not *traversable*. The Entry of the Record is thus:

Præsentat'

Præsentat' est per Forestarios & duodecim jurat' wardæ præd', & convictum per viridarios, quòd A. B. vicesimo septimo die Januarii, Anno Regni, &c. secundo, intravit forestam de Windsor, cum arcubus & sagittis, & ibid. versavit unam Damam ad mortem, & carnes cepit, & inde fecit voluntatem suam. Et testatum est per Vicecomitem quòd præd. A. B. non est inventus, nec aliquid habet in Balliva sua per quod attachiari potest, nec prius se reddidit, nec scitur quo devenitur, ideo exigatur de comitatu in Comitatum quousque utlagetur si non comparuerit; & si comparuerit, tunc vicecomes eum capiat, & salvò, &c. ad satisfaciend' domino Regi de transgressione præd' unde per forestarios, viridarios & alios ministros forestæ convictus est.

8. By which Form of Presentment you may see, that the Offences in *Swanimotes* are presented there by Foresters and the twelve sworn Men, and that the Offenders are convicted by the Verderors; so that an Indictment found in the *Swanimote*, is a Conviction in Law, and such an Indictment, by the Forest-Laws, cannot be *traversed*.

9. But all Presentments and Indictments made by the Foresters and the Jury, or twelve sworn Men, before the Justice in Eyre, for any Offence in *Vert* or *Venison*, are *traversable per Assisus forestæ*; and so it was adjudged by the whole Court at the Justice-Seat holden at *Waltham Holy-Cross* in *Essex*, before the good Earl of *Bedford*, then Lord Chief Justice in Eyre of all the Forests on this side of *Trent*, *Anno* 24 *Eliz.* where certain Indictments were found by the Jury, upon the Presentments made by the Foresters against *John West*, and *William Fiswick*, and others; and they were all traversed, because the Presentments were not first made at the *Swanimote*.

10. So that an Indictment at the Justice-Seat is traversable; but an Indictment at the *Swanimote*

cannot be traverſed by the Laws of the Foreſt: And with this my Lord *Coke* agrees. 4 *Inſt.* 290.

11. There is ſome Variance between the Form of an Entry of a *Preſentment* in the *Swanimote*, and the Form of a *Preſentment* in the Court of *Attachments*; for, in the *Swanimote*, the Words are, *viz. Præſentat' eſt per foreſtarios & duodecim juratores, & convict' per viridarios*; but the Words of a *Preſentment* in the Court of *Attachments* are, *Præſentat' eſt per A. B. foreſtarium*, only: *Aſſiſ. Lancaſtr. fo.* 11. See *Ordinatio foreſtæ, Anno* 34. *Ed.* in what manner Offenders ſhall be indicted at the *Swanimote*.

12. And great Care muſt be taken, that every Preſentment for an Offence done in the Foreſt, in *Vert* or *Veniſon*, be certain,

In reſpect of the { Perſon. / Place. / Thing. / Inſtruments. / Manner of the Act. / Value of the Vert. }

13. In reſpect of the *Perſon* of the Offender; for it muſt ſet forth his Name and Surname, and the Place where he dwelleth.

14. In reſpect of the *Place* where the Offence was committed; for it muſt ſet forth, That it was done in ſuch a *Place within the Foreſt*, that it may appear the Fact was committed therein.

15. In reſpect of the *Thing* itſelf, in which the Offence was committed, *viz.* It muſt ſet forth, That the Offender kill'd a *Buck* or *Doe*; or as the Caſe is.

In reſpect of the *Inſtruments* with which it was done, for thoſe muſt be certainly named, becauſe they

they are forfeited to the King; therefore it muſt ſet forth, that the Offender enter'd the Foreſt with a *Croſs-bow, Long-bow, Gun, &c.* and did there kill a Deer.

17. In reſpect of the *Manner of doing it*, for that muſt be ſet forth, becauſe the Puniſhment will be aggravated or extenuated thereby; for it may be either a voluntary or negligent Offence; as if a Man riding through a Foreſt with a *Greyhound* in a Slip, which, upon the Sight of the Deer, breaks looſe againſt the Will of the Owner, and kills the Deer, this is an Offence by Negligence.

18. In every Preſentment of Offences in *Vert*, the Value of it muſt be ſet forth; and it muſt be delivered to the Verderors upon the Oath of the Foreſter; for if it appears to be under the Value of 4 *d.* then 'tis too ſmall for the Juſtice-Seat; and in ſuch Caſe, the Verderors may determine it in the Court of *Attachments*, and aſſeſs the Fine and cauſe the ſame to be levied to the Uſe of the King.

19. And as every Preſentment concerning *Vert* or *Veniſon* muſt be certain; ſo every other Preſentment for any Offence ought to be in like manner very certain: And therefore Mr. Attorney *Noy* affirmed, That where a Preſentment was made at a Juſtice-Seat held in the Foreſt of *Windſor*, that 42 Cottages were built there, and inhabited by poor Men; but did not ſet forth by whom they were built, nor on whoſe Land; and that the Regarders ought to be fined, for that imperfect Preſentment; and Judgment was given againſt them all, *quòd proſternentur*. *Jones's Rep.* 273.

20. *In Itin. Windſor. Jones's Rep.* 275. Mr. Attorney *Noy* moved, That every Regarder might be fined *quia minùs plenè præſentaverunt & imperfectè*: Upon which the ſeveral *Regarders* of *Bamell's Bailiwick* were fined 5 *l.* every *Regarder* of *Finch-*

hamsted-Bailiwick, 5 *l.* and every *Regarder* of *Fine's Bailiwick*, 10 *l.* *Jones's Rep.* 275.

21. *In eodem Itinere*, one *Finch* was fined 10 *l.* for drawing Presentments of the *Agistors*, and for making them present such things which did not belong to their Charge. *Jones's Rep.* 280.

Purlieu.

See { *Charge in Chief Justice*, 46, 47, 48. *Forests*, 36. *Hunting*, 48, 63. *Prescription*, 17. *Ranger*, per totum. *Swanimote*, 22. *Appendix*, Stat. 33. Ed. 1.

1. THis is a certain Territory of Ground adjoining to a Forest, meered and bounded with immoveable Marks and Boundaries, and known by matter of Record only; which Territory of Ground was once Forest-Land, and afterwards disafforested by the *Perambulations* made for dividing the *new* afforested Lands from the *old*.

2. 'Tis derived from the *French Pur*, *i.e.* clear, intire, exempt, and *Lieu*, *i.e.* a Place; so that 'tis a Place exempt from the Forest.

3. The *Perambulation* by which the *Purlieu* is made, is called, in *French*, *Pourallee*, *i. e.* a *Perambulation*: So that the *Purlieu* and *Pourallee* are distinct Things; and the right Name of the Place disafforested is *Purlieu*. 4 *Co.* 303.

How the ſame did firſt begin.

4. When *H.* 2. commonly call'd *Fitz-Empreſs*, who was a *Frenchman* born, and Second Son of *Jeoffrey Plantagenet*, Earl of *Anjou*, came to be King, which was *Anno* 1154. he took ſo much Delight in the Foreſts, which were then here, that, in a few years afterwards, he inlarged them by the afforeſting the Lands of the Nobility, Gentry, and others, which joined to thoſe Foreſts; and thus it continued during all his Reign.

5. After his Deceaſe, *Richard* his Second Son ſucceeded, who, in a ſhort time afterwards, followed this Example of his Father, by afforeſting more Lands adjoining to his Foreſts; ſo that during his Reign, they were likewiſe very much inlarged.

6. Afterwards *John*, the youngeſt Son of *H.* 2. and Brother of King *Richard*, ſucceeded, *viz. Anno* 1199. and he likewiſe followed the Examples of of his Brother and Father, in afforeſting the Lands of his Subjects: So that the Foreſts were every where ſo much inlarged, that the greateſt Part of the Kingdom was turned into Foreſts, the Boundaries whereof were ſo large, and the Laws ſo very ſevere, that it was impoſſible for any Man, who lived within theſe Boundaries, to eſcape the Danger.

7. And thus it continued till the ſeventeenth Year of his Reign, which was in the Year 1215.

8. At which Time this being a general Grievance to the People, ſeveral of the Nobility and Gentry petitioned the King, That all the new Afforeſtations made by him and his Predeceſſors, might be diſafforeſted; and that he would likewiſe grant and confirm unto them ſuch Liberties and Privileges in the Foreſts as were agreed amongſt

themſelves, and ſet down in certain Articles read to be exhibited to him.

9. The King ſeem'd unwilling at firſt, but afterwards condeſcended, and promiſed to grant the ſame; and for that purpoſe, the Petitioners aſſembled themſelves in a Meadow called *Runing-Mead*, between *Windſor* and *Stanes*; and there the King met them on the 15th Day of *June*, in the eighteenth Year of his Reign, and finding it expedient to grant their Requeſts, he ſealed and ſubſcribed the ſaid Articles, being, for the moſt part, the ſame which are now contained in the *Charta de foreſta*, beginning thus:

10. *Johannes Dei gratia, &c. Rex, &c.* and dated thus: Given by our Hand in the Meadow call'd *Runing Mead*, or *Ryme-Mead*, between *Stanes* and *Windſor*, the 15th Day of *June*, in the eighteenth Year of our Reign. 4 *Inſt.* 298. *Hollingſhed*, 185. *B. Mait. Pariſ.* See the Records of the Tower, *Tempore Johannis*, and *Rayn. Wolfe*, 186. *A.* 10.

11. The King, at the ſame Time, not only granted their Petition, but gave Power and Authority to the Petitioners to chooſe certain grave and honourable Perſons to ſee all things performed which he had granted.

12. And thereupon they choſe for that purpoſe, the Earls of *Clare*, *Albermarle*, *Glouceſter*, *Wincheſter*, and *Hereford*; alſo Earl *Roger*, Earl *Robert*, Earl *Marſhal* the Younger, *Robert Fitz-Walter* the Younger, *Gilbert de Clare*, *Euſtace de Veſey*, *Hugh Bigot*, *William de Mowbray*, the Mayor of *London*, *Gilbert de la Vale*, *Robert de Roos*, *John Conſtable* of *Cheſter*, *Richard de Percy*, *John Fitz-Robert*, *William Mallet*, *Jeoffrey de Say*, *Roger de Mowbray*, *William de Huntingfeild*, *Richard de Mountfychet*, and *William de Albeny*.

13. Theſe Noblemen and Barons had ſeveral other Perſons ſworn to aſſiſt them in ſuch Things

as

as they ſhould appoint for the better accompliſhing the ſaid Grant.

14. And moreover the King by his Letters Patent, which were directed to the Sheriffs of every County, commanded them to ſee thoſe Ordinances and Liberties, which he had granted and confirmed, to be diligently obſerved and kept; and he procured the Pope to confirm the ſame.

15. But before any Thing was done in purſuance thereof, King *John* died at *Newark Caſtle* in the County of *Nottingham:* And his eldeſt Son *H.* 3. who was then but 9 Years old, ſucceeded him, *viz.* in 1216. but nothing was done by him till the 9th Year of his Reign.

16. (At which the King keeping his *Chriſtmas* at *Weſtminſter*, aſſembled his Parliament there, and demanded Money for carrying on his Wars againſt *France*; and accordingly had the 15th penny in value of all the moveable Goods in the Kingdom, as well of the Spiritualty as the Temporalty, upon Condition that he would confirm the Liberties of his Subjects.

17. And therefore in the Charter, by which he confirmed the diſafforeſting all the new afforeſtations, 'tis expreſly mentioned, that it was in conſideration of a full fifteenth penny in value, of all the moveable Goods as aforeſaid: And thus the King deſiring to have the Money, condeſcended to the Requeſts of his People, and made and confirmed thoſe two *Charters*, *viz.* *Magna Charta*, and *Charta de Foreſta.*)

18. Theſe *Charters* ſo made and confirmed in this Parliament, being in After-ages found to be very good and neceſſary for the People, have ſeveral Times been confirmed by ſucceeding Kings, and part of the Laws of this Kingdom, now in Uſe, depend thereon. See *Rotul. in Turre, in perambulatione Foreſtæ* 39 *Ed.* 1. and *Raym. Wolf. fo.* 207.

19. This King ſent thoſe Charters into every County to be proclaimed: The firſt Article of *Charta Foreſtæ* is thus, *viz. Imprimis omnes foreſtæ quas Henricus avus noſter afforeſtavit, videantur per bonos & legales homines, & ſi Boſcum aliquem alium quàm ſuum Dominicum afforeſtavit ad dampnum illius cujus Boſcus ille fuerit, ſtatim deafforeſtetur, & ſi Boſcum ſuum proprium afforeſtaverit, remaneat foreſta, ſalvâ communâ de Herbagio & aliis in eadem illis qui eam habere conſueverunt.*

20. And likewiſe in the third Article of the ſaid Charter of the Foreſt, there are theſe Words, *viz. Omnes autem boſci qui fuerunt afforeſtati per Regem Richardum avunculum noſtrum, vel per Regem Johannem patrem noſtrum uſque ad primam Coronationem noſtram, ſtatim deafforeſtentur, niſi ſit Dominicus boſcus noſter.*

21. And for the better performing theſe two Articles, for diſafforeſting ſuch Woods and Lands as were afforeſted by the aforeſaid Kings; it was decreed by *H.* 3. That on a certain Day after *Eaſter* then next following, an Inquiſition ſhould be taken by a ſubſtantial Jury, for the dividing the *new Foreſts* from the *old*; ſo that all thoſe Lands which had been made Foreſts ſince the Reigns of the ſaid *Kings*, and likewiſe of this King *H.* 3. ſhould be diſafforeſted.

22. And thereupon, after *Eaſter*, one *Hugh de Novile* and *Bryan de Liſle* were ſent forth as Commiſſioners to take thoſe Inquiſitions, as may be ſeen in the *Tower* in the Perambulation of Foreſts made by *H.* 3. by vertue whereof many great Woods and Lands were diſafforeſted, aſſarted and improved into arable Lands by the Owners.

23. After the Charter thus made and confirmed, ſome of the new Afforeſtations were *perambulated*; and after ſuch *Inquiſitions* taken, and the certain extent of the Ground known by matter of Record, *viz.* What Woods and Lands were newly afforeſt-

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ed by any of the aforeſaid *Kings* ſince the Coronation of *H.* 2. ſome of them were diſafforeſted by the ſaid King *H.* 3. but yet the greateſt part remained ſtill afforeſted during all his Reign.

24. After whoſe Death *Edw.* 1. ſirnamed *Longſhanks*, eldeſt Son of *H.* 3. ſucceeded, *viz.* 22 *November*, *Anno* 1273. who being often petition'd both by the Nobility and Gentry to confirm thoſe Liberties which his Father had granted, did at laſt confirm the ſame.

25. And now, when all Things were confirmed according to their Petition, they delivered both thoſe *Charters*, thus confirmed, to the Sheriffs of *London*, who read the ſame in a great Aſſembly of the People in St. *Paul's Church-yard*; and afterwards the Lords and Commons petitioned the King that *Perambulations* might be made of all the *new Foreſts*, that the ſame might be *diſafforeſted* according to the aforeſaid Articles.

26. By the Records in the *Tower* in the Reign of *Ed.* 1. it appeareth, That three *Biſhops*, three *Earls*, and three *Barons* were appointed to make thoſe *Perambulations*, who being Commiſſion'd by the King under the *Great Seal* of *England* for that purpoſe, did accordingly *perambulate* the ſame: And after that was done, and *Inquiſitions* taken as aforeſaid, and returned into the *Chancery*, by which the King was aſcertained which were *new* and which were *old Foreſts*; he cauſed all thoſe which were the *old Foreſts* to be meered and bounded with unremoveable Marks, Meers and Boundaries, to be known by matter of Record for ever; and thus he divided the *new* from the *old*, which he cauſed to be likewiſe returned into that *Court* by Marks, Meers and Boundaries, to be known by matter of Record for ever.

27. And after all this was done, the King by Letters Patent under the *Great Seal* of *England*, re-

citing the *Perambulations* ſo made and returned into the *Chancery*, did thereby grant and confirm the ſame, and that all ſuch *new Afforeſtations*, as by thoſe *Perambulations* were ſevered from the *old* to be diſafforeſted, ſhould remain ſo for ever; and that all Woods and Lands which were *ancient Foreſts* before any ſuch *new Afforeſtations* made, ſhould likewiſe remain and continue Foreſts ſtill, and by ſuch Marks, Meers and Boundaries as they were then returned and certified of Record.

28. And that the manner thereof may the better be underſtood, I have here ſet down two perfect Precedents, one for the *Foreſt of Waltham*, the other for the *Foreſt of Windſor*.

'Edwardus, Dei Gratia Rex Angliæ, Dominus 'Hiberniæ, & Dux Aquitaniæ, omnibus ad quos 'præſentes literæ pervenerint, Salutem. Sciatis, 'quod cum Communitas Regni noſtri nobis con'ceſſerit *quintamdecimam*, omnium bonorum ſuo'rum mobilium, quæ habebunt in Feſto Sancti 'Michaelis proximo futuro, extunc taxandorum, 'quæ quidem quintadecima poſt hujuſmodi taxa'tionem colligi debet, levari, & fideliter nobis 'ſolvi; Volumus & concedimus pro nobis & hæ'redibus noſtris, quod perambulationes factæ coram 'dilecto & fideli noſtro Radulpho de Hengham '& ſociis ſuis ad hoc aſſignatis, per præceptum 'noſtrum, de Foreſtis noſtris in Comitatu Eſſex, 'de cætero teneantur & obſerventur per metas '& bundas contentas in eiſdem perambulationibus, 'quarum tenor de verbo ad verbum ſequitur in 'in hunc modum;

'ff. Perambulatio Foreſtæ de Waltham in Co'mitatu Eſſex, facta apud Chelmesford, Die Ve'neris in Craſtino Aſcenſionis Domini, Anno 'regni Regis Edwardi, filii Regis Henrici viceſi'mo octavo, coram Dominis, Radulpho de Heng-

'ham,

' ham, Willielmo Troſſel, Stephano de Graveſ-
' end, & Willielmo de Sutton, Juſticiariis Domi-
' ni Regis ad dictam perambulationem faciendam
' aſſignatis, *viz.* per Dominos, Robertum de San-
' to Claro, Hugonem de Blunde, Thomam de
' Maundevill, Walterum le Bande, Willielmum
' de Haningfield, Johannem Heron, Radulphum
' de Hemenhale, Willielmum de Horkely, Johan-
' nem de Preers, Johannem de Sutton, Milites;
' Johannem Dowe, Johannem Malegraffe, Mat-
' thæum de Branketree, Sewallum de Waleton,
' Edmundum de Badewe, Richardum de Clovil,
' Rogerum Bokſcyn, Richardum le Dukes, Ro-
' bertum le Walies, Thomam de Septem fontibus,
' Warinum Code, Willielmum de la Rokele, Jo-
' hannem de Slamondeſhey, Lucam Morel, &
' Thomam de Ulting, Juratos, qui inceperunt
' præd' perambulationem die prædicto, ad pon-
' tem de Stratford vocatum le Bowe, ſub quo cur-
' rit Ripa de Luye & ſic eundo in Hundred' de
' Becontree per regiam viam uſque Hyleford, &
' de Hyleford directé per eandem viam Regiam
' quæ ducit verſus Romford, uſque ad quandam
' crucem ſitam ad caput cujuſd' venellæ vocatæ
' Wytheſlane in villa de Havering, & ab illa cruce
' retornando verſus Auſtrum per hayam, quæ eſt
' diviſa inter terram Gilberti Godebold de feodo
' Abbatiſſæ de Barking, & terram Johannis Atte
' Withe de feod' de Havering, quæ haya eſt divila
' inter villas de Havering, & Dakenham, & ſic per
' illam hayam uſque ad foſſatum Johannis de Fran-
' ſith, & Agnetis Attewithe de Dakenham, &
' ab illo foſſato uſque ad Regiam viam quæ ducit
' de Yleford uſque ad Monaſterium cornutum, ſi-
' cut quædam aqua decurrit ex tranſverſo ejuſdem
' viæ, quæ aqua vocatur Wythedenbroke, & eſt
' diviſa inter Havering & Dakenham. Et ab illa
' aqua uſque ad quendam locum vocatum la Berwe,

' cum

' cum tota pecia terræ, in qua prædictus locus vo-
' catus la Berwe exiſtit, ſicut diviſa ſe extendit in-
' ter villas de Havering & Dakenham uſque ad
' quendam curſum aquæ vocatum la Borne, quæ
' aqua decurrit de quodam fonte vocato Havering-
' Welle uſque ad quendam locum vocatum Daken-
' hambeem, & ab illo loco uſque ad filum aquæ
' de Tamiſe, per quoddam foſſatum vocatum
' Marke dike, inter Havering & Dakenham. Et
' ſic per Tamiſiam uſque ad fletum vocatum Wa-
' deflet, extendens ſe uſque ad quendam pontem
' vocatum Reynhambeem, quod fletum dividit vil-
' las de Havering & Reinham in Hundred. de
' Chafford, & ab illo ponte vocato Reinham-
' beem directè uſque ad pontem vocatum Delle-
' bregge, ſicut aqua decurrit, qnæ eſt diviſa inter
' Hundred' de Becontree & Chafford, & ab eo-
' dem ponte uſque ad quendam alium pontem vo-
' catum Weldebornebregge ſemper per rivulum
' qui dividit villas de Havering & Welde Abbatis,
' & ab illo ponte per eundem rivulum uſq; ad
' quandam diviſam vocatam Markthorn, quæ di-
' vidit villas de Havering, Welle Abbatis & Naſtock
' in Hundred' de Aungre & ſic in Hundred' de
' Becontree remaneant integrè in Foreſta villæ de
' Havering cum ſuis appendiciis, Wanſteed, Ley-
' ton, Welcomeſtow, & Woodford. Et villæ de
' Stratford in Weſtham, Eſtham, Hyleford parva,
' Berking & Dakenham pro parte remanent extra
' Foreſtam, & pro parte remanent in Foreſta, pro-
' ut ſuperiùs per metas & bondas pleniùs dividun-
' tu, Et ſic eundo à prædicta diviſa de Markethorn
' ſemper per prædictum rivulum uſque ad domum
' Roberti le Tanour de Naſtock in Hundred' de
' Aungre, & ab illa domo uſque ad meſſuagium
' Willielmi filii Hugonis de Naſtock: Et ſic deinde
' ad Heſiam, directè ſicut itur ad domum Ed-
' mundi de Naſtock, Et ab illa Heſia uſque ad

meſſua-

meſſuagium quoddam Henrici de Wickham de eadem, & ab illo meſſuagio uſque ad quendam locum vocatum Frithſtigele in eadem, & ab illo uſque ad terram Johannis de Stodeley, & ab illa terra uſque ad Ripam talliatam, & ſic ſemper per eandem Ripam uſque ad pont. vocat. Pyſſingford-bregge per mediam Ripam & à dicto ponte per mediam ripam uſque ad quendam pontem vocatum Affebregge, & ab illo ponte eundo directè uſque ad Eccleſiam de Theydonboys, & ab eadem Eccleſia uſque ad meſſuagium Joh. de Ruſſelep ex oppoſito meſſuagio Rectoris Eccleſiæ de Theydonboys: Et ab illo loco retornando per coſteram Boſci dicti Rectoris, & Gilberti de Theyden, uſque ad meſſuagium ejuſdem Gilberti, & à dicto meſſuagio aliàs retornando per Hayam dicti Gilberti, uſque ad meſſuagium Johannis Sprige: Et ſic ab illo meſſuagio per venellam jacentem ante meſſuagium prædictum vocatam Sprigeſlane, uſque ad domum Rogeri Arteffrythe: Et ab illa domo directè ad domum Willielmi de Gardener in eadem villa ſitam ſuper coſteram de Eppinghath, & ab illa domo retornando per diviſam, quæ dividit dimidium Hundred' de Waltham, & Hundred' de Aungre, directé uſque ad caput Boſci vocatum vetus Wintered: Et ab illo Boſco per Regiam viam quæ eſt diviſa prædictorum Hundred' de Aungre & Waltham, extendentem ad Boſcum vocatum Gernonneſwood in villa de Theydon Garnon: Et ab illo Boſco uſque ad quercum vocat. Mark-oake quæ eſt diviſa inter terras Abbatis de Waltham, & Roberti filii Walteri, & Willielmi Garnon: Et ſic retornando per regiam viam, quæ extendit inter terras prædictorum Abbatis de Waltham, & Roberti filii Walteri, directè uſque ad locum vocatum Reodegate, in villa de Welde, & ſic in Hundred' de Aungre, remanent integrè in Foreſta, villæ de Loketon,

Chige-

' Chigewell, Lamborn, & Stapleford Abbatis: Et
' villæ de Noſtock & Theydonboys, pro parte,
' remanent in Foreſta, & pro parte extra Foreſ-
' tam, prout ſuperius per metas & bundas plenius
' dividuntur: Et omnes reſiduæ villæ in Hundred'
' de Aungre prædicto debent remanere extra Fo-
' reſtam: Totum dimid' Hundred' de Waltham
' remanet integre in Foreſta, nihil excipitur: To-
' tum dimid' Hundred' de Harlow remanet extra
' Foreſtam, præter villatam de Hatfield Regis cum
' ſuis Appendiciis quæ integrè remanet in Foreſta,
' eo quod eſt de antiquo dominico Domini Regis,
' ſimul cum Hamletto vocato la Walle, & Boſco vo-
' cato le Monkenwood cum ſuis pertinentiis: Totum
' Hundred' de Chelmsford remanet extra Foreſ-
' tam præter villatam de Writtel, quæ integrè re-
' manet in Foreſta cum ſuis appendiciis, eo quòd
' eſt de antiquo dominico Domini Regis: Item in-
' cipiendum eſt apud Coleceſt' ad pontem voca-
' tum Northbregge, eundo per Regiam viam du-
' centem ad quandam crucem vocatum Mylande-
' crouche, ſitam ſuper caput cujuſdem Breueræ
' vocatum Kingeſwodeheth, & ſic deinde ante meſ-
' ſuagium Richardi Martin, uſque ad quandam
' Heſiam ante meſſuagium W. Warin de Coleceſt',
' & ſic eundo per foſſatum dictæ Brueræ uſque ad
' quandam plateam vocat' Kingeſwodhach, quæ
' eſt diviſa inter villam de Horkeley & Kingeſ-
' wodheth: Et ſic directè per foſſatum Philippi
' Attehache uſque ad meſſuagium W. le Herd de
' Horkeley quondam Edmundi Attehache, & ſic
' per quoddam foſſatum extendens inter Horkeley
' & Kingeſwood uſque ad quandam diviſam, quæ
' dividit villam de Horkeley, Bexſted & Kingeſ-
' wod: Et ab illa diviſa per quoddam foſſatum,
' quæ dividit Bexſted & Kingeſwod, uſque ad
' quandam aliam diviſam quæ dividit Boſcum Rad.
' de Bexſted & Boſcum Johannis le Breton: Et

' ſic

ſic eundo per foſſatum quod dividit Kingeſwod & Boſcum præd' Johan. le Breton uſque ad foſſatum parci de Lengham: Et ſic per præd' foſſatum uſque ad locum vocatum Kingeſwodebregge ad coſteram dicti parci, & ſic retornando per regiam viam, quæ ducit verſus Coleceſt', uſque ad pontem vocatum Eſtbregge: Et à dicto ponte de Eſtbregge, uſq; ad quand' port' Coleceſt' vocat' Eſtgate cum tota præd' villa Coleceſt' infra muros cum omnibus dominicis Domini Dom' Regis ad caſtrum ſuum Coleceſt' ſpectantibus: Et ſic in Hund' de Lexeden, remanet integrè in Foreſta villa de Myland' cum Boſco de Kingeſwod cum ſuis appendiciis: Et dicunt etiam quod Hund' de Weſtodeleford, Eſtodeleford, dimid' Hundred' de Froſſchewel, & dimid' Hundred' de Clavering ſunt integrè extra Foreſt', & fuerunt à tempore quo non extat memoria. Item dicunt quòd Hund' de Dunmow, Hengeford, & Laxeden, ex parte Boreali de la Stanſtreet, quæ ducit de Storteford uſq; Coleceſt', ſunt extra Foreſt' de perquiſito Albricii quondam Com' Oxon. Item dicunt, quod id quod eſt ex parte Auſtrali de dicta Stanſtreet in præd' Hund' de Dunmow, Laxeden, & Hengeford, debet remanere extra Foreſt' præter id quod ſuperius nominatur in Hund' de Laxeden in villa de Coleceſt', & præter villatam de Felſtede cum Boſco de Blakholehey cum ſuis pertinen. in Hundred' de Hengeford, quod quidem manerium de Felſtede cum Boſco de Blakholehey præd' cum pertinentiis Abbatiſſa de Cadamo tenet de dono Will'i Regis Conqueſt' Angliæ, & tenere clamat adeo liberè, ſicut iidem manerium & Boſcus tenebantur tempore Ed. 2. Regis Angliæ; ſed nihilominus dicimus quòd præd' manerium cum præd' Boſco cum ſuis appendiciis integrè remanere debent in Foreſta. Item dicunt quod

Hund'

' Hund' de Tendringe & Rochford integrè ſunt ex-
' tra Foreſtam, & fuerunt à tempore quo non ex-
' tat memoria. Item dicunt quod Hund' de Chaf-
' ford, Bordeſtable, Danuſeye, & dimid' Hund'
' de Wytham, dimid' Hund' de Thurſtable, & di-
' mid' Hund' de Weneſtr. totaliter debent eſſe
' extra Foreſtam ſecundum tenorem Magnæ Char-
' tæ de Foreſta, eo quod afforeſtata fuerunt poſt
' Coronationem Dom' H. Regis Avi Dom. H. Re-
' gis patris Dom' Ed. Regis nunc, & per Reges R.
' & J. Quæ quidem perambulatio præſcripta adeo
' aperte & evidenter facta eſt, ſecundum intellec-
' tum, & ſanas conſcientias noſtras, ut didicimus
' per Anteceſſores noſtros: Et Sacramentum pro-
' borum militum & virorum antiquorum fide dig-
' norum nunc ſuperſtitentium & præmeditantium
' propter diuturnitatem temporis elapſi, adeo long'
' cujuſcunq; alterius perambulationis in com' Eſ-
' ſex factæ, & melius ac plenius ſuper perambula-
' tione præd' deſideraremus certiorari tam pro ſta-
' tu Dom. Regis quam populi ſui, Si idem Domi-
' nus Rex evidentias aliquas apertas, ſi quas habue-
' rit, nobis, ut cæteris de regno ſuo infra limites
' Foreſtæ ſuæ exiſtentibus per conſilium ſuum in
' ultimo Parliamento ſuo apud Weſt' promiſit &
' conceſſit, demandaſſe placuiſſet. In cujus rei Te-
' ſtimonium, huic præſenti perambulationi, nos
' præd' Jur. ſigilla noſtra appoſuimus, Datum apud
' Chelmsford die & Anno ſupradictis: Ita quod,
' quicquid per iſtas perambulationes ponitur extra
' Foreſtam remaneat extra Foreſtam, & reſidu-
' um remaneat Foreſta, ſecundum metas & bun-
' das præd' imperpetuum. In cujus rei teſtimoni-
' um has literas noſtras fieri fecimus patentes.
' Teſte me ipſo apud Lincoln', quartodecimo
' die Februarii, Anno Regni noſtri viceſimo
' nono.

30.

30. The other is the Proceſs of Perambulation of the Foreſt of *Windſor*, made in the County of *Surrey*, at a Parliament held at *Weſtminſter* in the firſt Year of the Reign of *Ed.* 3.

31. At which Parliament a Complaint being made by the Lords *Spiritual* and *Temporal*, and Commons of the Realm, That the *Perambulations* made in the Reign of King *Edward*, Grandfather of the *King*, and granted and confirmed by him, were not kept or obſerved, and that ſeveral *Perambulations* in ſome Foreſts were not made, but ſtill remained to be made in the Reign of the King's Father; he therefore at their *Petition* granted, that thoſe *Perambulations*, which were already made, ſhould be confirmed for the Time to come, and thoſe which were not made, ſhould forthwith be done with all convenient ſpeed; and as ſoon as made, that the ſame ſhould be returned into the Court of *Chancery*, by certain *Meets* and *Bounds*, which he would confirm by his *Charter*, both for *himſelf* and for *his Heirs*, to be obſerved for ever.

32. And the King was graciouſly pleaſed to grant his *Charter* in Parliament, in every County to thoſe who would *Petition* for the ſame.

33. Whereupon the Commonalty of the County of *Surrey*, who were aggriev'd in their Lands lying in the Foreſt of *Windſor*, petition'd to have the King's *Charter* under Seal; which they had accordingly, teſtifying his Pleaſure as aforeſaid, as it appears more plainly in the Exemplification of the ſaid *Charter*, kept in the *Abbey of Chertſey*: And which is as followeth.

'34. Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, omnibus ad 'quos præſentes literæ pervenerint, ſalutem: Sciatis,

'quod

‘ quòd cùm celebris memoriæ Dominus Ed. quon-
‘ dam Rex Angliæ, avus noſter, dudum fideles
‘ ſuos aſſign. ad Perambulationes in foreſtia ſuis,
‘ tam citra Trentam quàm ultrà faciend', & poſt-
‘ modum quaſdem perambulationes in aliquibus
‘ foreſtarum illarum ſub certis metis & bundis in
‘ eiſdem content', factas, & retornatas per literas
‘ ſuas patentes pro ſe & hæredibus ſuis conceſſiſſ. &
‘ confirmaſſet, cæteroque præcipiſſet per prædict.
‘ metas & bundas in perpetuum obſervari, peram-
‘ bulationibus hujuſmodi tempore dicti Avi noſtri
‘ in aliquibus foreſtis remanentibus faciend', ac Do-
‘ minus Edwardus nuper Rex Angliæ Pater noſter
‘ in Parliamento ſuo nuper apud Lincoln convoca-
‘ to ad ſupplication' Prælatorum, Comitum & Ba-
‘ ronum, & communitatis regni ſui, aſſerentium
‘ dictas perambulationes factas, obſervatas non
‘ fuiſſe juxta conceſſionem & confirmation' præ-
‘ dictas, & perambulationes hujuſmodi alibi factas
‘ non fuiſſe, per literas ſuas patentes, quinto
‘ die Auguſti, Anno regni ſui decimo, conceſſ.
‘ pro ſe & hæredibus ſuis, quòd prædict' perambu-
‘ lationes præd' per dictum Avum noſtrum con-
‘ ceſſæ & confirmatæ, ſicut præd' eſt, ſub metis &
‘ bundis in dictis literis patentibus ipſius Avi noſtri
‘ content' & ſpecificat', teneantur & in perpetu-
‘ um obſervarentur; promittens quòd fideles ſuos ad
‘ perambulationes in foreſtis in quibus tunc factæ
‘ non fuerunt, faciend' aſſignari faceret: Ita quòd
‘ perambulationes illæ fierent ante feſtum Natalium
‘ Domini tunc prox' futur' & quòd perambula-
‘ tiones illas, cùm factæ fuiſſent, & retornatæ, per
‘ literas ſuas patentes, quas in eiſdem contigerit
‘ contineri, pro ſe & hæred' ſuis confirmaret, prout
‘ in his Literis patentibus, ipſius patris noſtri ſuper
‘ hoc confactis, pleniùs continetur: Ac etiam in-
‘ ſinuatione Prælatorum, Comitum & Baronum &
‘ totius Communitatis regni noſtri in inſtanti Par-
lia-

liamento noſtro apud Weſtmonaſt' convocato accepimus, quòd tempore dicti patris noſtri, perambulationes prædict' per prædict' Avum noſtrum, ut præmittitur, conceſ. & confirmatæ, non fuerunt obſervatæ, & quòd perambulationes hujuſmodi non factæ, remanſerunt faciend'; per quod nobis cum inſtantia ſupplicarunt, ut perambulationes, per dictum Avum noſtrum, ut præmittitur, conceſſas & confirmatas, confirmare & ratificare velimus; Ac etiam perambulationes, quæ nondum factæ ſunt, fieri faceremus indilatè: Nos eorum ſupplicationi in hac parte favorabiliter annuentes, concedimus pro nobis & hæredibus noſtris, quòd perambulationes præd' per præfat' Avum noſtrum conceſſæ & confirmatæ, ſub metis & bundis in dictis literis ipſius Avi noſtri contentis & ſpecificat', teneantur & in perpetuum obſerventur: Et volumus quod perambulationes, quæ in aliquibus foreſtis adhuc reſtant faciend' per fideles noſtros ad hoc aſſignand' fiant, ſub ea celeritate, quâ fieri poterunt, bono modo: Quas quidem perambulationes, cùm factæ fuerint & nobis retornatæ ſub metis & bundis quas in eiſdem inveniri contigerit, per literas noſtras patentes pro nobis & hæredibus noſtris confirmari & approbari faciemus. In cujus rei Teſtimonium has literas noſtras fieri fecimus patentes: Teſte meipſo apud Weſtm' xxiii die Martii, Anno regni noſtri primo.

Per ipſum Regem & Conſ'.

35. Afterwards the Commonalty of *Surrey*, who found themſelves aggrieved, becauſe the Perambulations were not made in the Foreſt of *Windſor* in that County, in the Reign of King *Edward*, that King's Grandfather, nor in the Reign of his Father, obtain'd a Commiſſion from the King, that

the Perambulations ſhould be made, which follow in theſe Words:

' 36. Edwardus, Dei gratia Rex Angliæ, Do-
' minus Hiberniæ, & Dux Aquitaniæ, dilectis &
' fidelibus ſuis, Tho' Tegorr, Johanni de Stonore,
' Johanni de Iſeild, & Johanni Dabnon, ſalutem:
' Sciatis, quod cùm in Parliamento noſtro apud
' Weſtm' convocato, per Prælatos, Comites, &
' Barones, & communitatem regni noſtri, Aſſeren-
' tes, quod perambulationes tempore Domini Ed.
' quondam Regis Angliæ Avi noſtri, in foreſtis
' ſuis tam citra Trentam quàm ultra factæ, non
' fuerunt obſervatæ, nobis fuiſſet ſupplicatum, ut
' nos eas ſic factas per dictum Avum noſtrum con-
' ceſſas & confirmatas, juxta eaſdem conceſſionem
' & confirmationem in omnibus obſervari, & in fo-
' reſtis, ubi dictæ perambulationes remanent faci-
' end', eas fieri, & factas in forma prædicta con-
' firmari curaremus. Aſſignavimus vos, duos vel
' tres Veſtrum, quorum vos præfat' Johannem de
' Stonore unum eſſe volumus, cuſtod' foreſtæ no-
' ſtræ citra Trentam, vel ipſum quem poſueris
' loco ſuo, & omnes foreſtar' de feodo, & virida-
' rios de foreſtis noſtris in Com' Surrey, ad per-
' ambulationem rectam per viſum trium vel duo-
' rum veſtrum, quorum vos præfat' Johannem Sto-
' nore unum eſſe volumus, & illorum in foreſtis
' noſtris, in eodem in quibus dictæ perambulatio-
' nes tempore dicti Avi noſtri factæ non fuerunt,
' per ſacr' tam militum quàm aliorum proborum &
' legalium hominum de eodem Com, per quos rei
' veritas melius ſciri, & perambulationes illæ fieri
' poterunt, faciend', juxta tenorem Chartæ Do-
' mini Henrici quondam Regis Angliæ, proavi
' noſtri, de foreſta: Et ideo vobis mandamus,
' quod ad certos dies & locos, quos vos tres, vel
duo

' duo veſtrum, quorum vos præfat' Johannem de
' Stonore unum eſſe volumus, ad hoc providentes,
' præmiſſa faciatis in forma præd', ita quod pe-
' rambulationes præd' fiant & nobis retorn' citra
' feſtum Natalis Domini prox' futurum. Manda-
' vimus enim Vic' noſtro Com' præd' quod ad cer-
' tos dies & locos, quos vos tres vel duo veſtrum,
' quorum vos præfat' Johannem de Stonore unum
' eſſe volumus, ei ſcire faciatis, venire faciat coram
' vobis, tribus vel duobus veſtrum, quorum vos præ-
' fat' Johannem Stonore unum, &c. tam Milites,
' quàm alios probos & legales homines de Com'
' præd' per quos rei veritas melius ſciri & peram-
' bulationes præd' fieri poterint ſicut prædictum
' eſt, Et perambulationem illam diſtincte & ap-
' perte ſic factam, nobis ſub ſigillis veſtris, trium
' vel duorum veſtrum, quorum vos præfat' Johan-
' nem de Stonore unum eſſe volumus, & ſigillis
' eorum, per quos factæ fuerint, reportetis ante
' feſtum ſupradictum, ut eam confirmemus juxta
' conceſſionem noſtram dictis magnatibus inde
' factam. In cujus rei Teſtimonium, has literas
' noſtras fieri fecimus Patentes: Teſte meipſo apud
' Weſtmonaſt' xx die Martii, Anno regni noſtri
' primo.

Per ipſum Reg. & Conſ'.

37. And becauſe 'tis mentioned in the ſaid Commiſſion, That the Sheriff of *Surrey* ſhould cauſe certain *good and lawful Knights and others of that County*, to come before the Commiſſioners on a certain Day and Place by them to be appointed for that purpoſe, to make the ſaid Perambulation; therefore the King did iſſue forth a Writ out of the Court of Chancery, giving him Authority ſo to do, which is as follows:

' 38. Edwardus, Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, Vic' Surrey Salutem: Sciatis, quod cum in Parliamento noſtro nuper apud Weſtm' convocato, per præfat' Comites, Barones, & Communitatem regni noſtri aſſerentes, quod perambulationes tempore Domini Edwardi quondam Regis Angliæ, Avi noſtri, in foreſtis ſuis tam citra Trentam quàm ultra factæ, non fuerunt obſervatæ, nobis fuiſſet ſupplicatum, ut nos eas ſic factas per dictum avum noſtrum conceſſas & confirmatas, juxta eaſdem conceſſionem & confirmationem in omnibus confirmari & in foreſtis, ubi dictæ perambulationes remanent faciend', eas fieri, & factas in formâ præd' confirmari curaremus, aſſignavimus dilectos & fideles noſtros Tho' Tregorr, Johannem de Stonore, Johannem de Iſeild, & Johan' Dabnon, tres vel duos eorum, quorum præfat' Johannem Stonore unum eſſe volumus ad convocand' in præſentiâ eorundem Thomæ, Johan', & Johan', vel duorum illorum, quorum prefat' Johannem de Stonore unum eſſe volumus, cuſtod' foreſtæ noſtræ citra Trentam, vel ipſum quem poſuerit loco ſuo, & omnes foreſtar' de feodo, & viridarios foreſtæ noſtræ in Com' Surrey, ad perambulationem rectam, per viſum eorum vel trium eorum quorum præfat' Johannem de Stonore unum eſſe volumus, in foreſtis noſtris in Com' præd, in quibus perambulationes tempore dicti Avi noſtri fact' non fuerunt, per Sacramentum tam militum quàm aliorum proborum & legalium hominum de Com' tuo, per quos rei veritas melius ſciri, & perambulationes illæ fieri poterint, faciend' juxta tenorem Chartæ Domini Henrici nuper Regis Angliæ, proavi noſtri, de foreſta: Et ideo tibi præcipimus, quod ad certos dies & locos, quos iidem Tho' Johannes, & Johannes, tres vel duo eorum, quorum

'rum Johannem de Stonore unum eſſe volumus, 'tibi ſcire faciant, venire faciatis coram eis, tribus 'vel duobus eorum, quorum præfat' Johannem de 'Stonore unum eſſe volumus, tot & tales, tam 'milites quàm alios probos & legales homines de 'Com' præd', per quos rei veritas melius ſciri, '& perambulationes præd' fieri poterint, ſicut præ-'dictum eſt, & Habeas ibi hoc breve. Teſte 'meipſo apud Weſtm' xx. die Martii, Anno regni 'noſtri primo.

Per ipſum Regem & Conſ'.

39. And becauſe the Commiſſioners by this laſt recited Commiſſion, are to call before them the *Warden of the Foreſts on this ſide Trent, or his Deputy*, in order to make a true Perambulation; therefore, by vertue of the ſaid Commiſſion, they ſent their Writ, directed to the ſaid *Warden* or his Deputy, injoining them to be, on a certain Day and Place, with the ſaid Commiſſioners, to do the ſame; the Writ is as follows:

'40. Tho' Tregorr, Johannes de Stonore, Jo-'hannes de Iſeild, & Johannes Dabnon, cuſtod' 'foreſtæ Domini noſtri Regis citra Trentam & 'ejus locumtenen' in Com' Surrey, ſalutem. Cum 'in Parliamento Domini noſtri Regis nuper apud 'Weſtm' convocato, per Prælatos, Comites, & 'Barones, & communitatem regni, aſſerentes quod 'perambulationes tempore dicti Edwardi quon-'dam Regis Angliæ, avi ſui, in foreſtis ſuis, 'tam citra Trentam quàm ultra factæ, non fue-'runt obſervatæ: Et eidem Domino Regi ſup-'plicatum fuiſſet, ut ipſe eas ſic factas per dictum 'avum ſuum conceſſas & confirmatas, juxta eaſdem 'conceſſion' & confirmation' in omnibus obſerva-'ri, & in foreſtis, ubi dictæ perambulationes rema-'nent faciend' eas fieri, & factas in formâ præd'

'confirmari curaret: Idem Dominus Rex af-
'ſignavit nos, tres & duos noſtrum, quorum
'Johannem Stonore unum eſſe vult, ad convo-
'cand' in præſentiâ noſtrum, trium vel duorum
'noſtrum, quorum Johannem de Stonore unum
'eſſe vult Cuſtodem foreſtæ ſuæ citra Trentam,
'vel ipſum quem poſuerit loco ſuo, & omnes fo-
'reſtarios de feodo, & viridarios foreſtarum ſua-
'rum in dicto Com' Surr', ad perambulationem
'rectam per viſum noſtrum, trium vel duorum
'noſtrum, quorum Johannem de Stonore unum eſſe
'vult, & illorum in foreſtis illis in eodem Com' in
'quibus perambulationes tempore dicti Avi ſui
'factæ non fuerunt, per ſacramentum tam militum
'quàm aliorum proborum & legalium hominum
'de eodem Com', per quos rei veritas melius ſciri
'& perambulationes illæ fieri poterint, faciend'
'juxta tenorem Chartæ Domini Henrici quondam
'Regis Angliæ, proavi ſui, de foreſta: Et quia
'Dominus Rex nobis mandavit, quod convocari
'fac. cuſtodem foreſtæ ſuæ citra Trentam, vel ip-
'ſum quem loco ſuo poſuerit in dict' Com' Surr'
'ad perambulat' rectam faciend', nos pretextu
'illius mandati aſſignavimus diem eſſendi apud
'Certeſiam, die Lunæ prox' poſt quindenam ſancti
'Johannis Baptiſtæ ad incipiend' exinde ad dictam
'perambulationem faciend, Quem diem vobis aſ-
'ſignavimus, ut vos ad diem præd' ibidem perſo-
'naliter interſitis, vel ipſe quem loco veſtro poſu-
'eritis, ibidem interſit: Ita quod dicta perambu-
'latio per viſum veſtrum, noſtrum, & aliorum ad
'hoc ſummon' rectè fieri poſſit, ſecundùm teno-
'rem Chartæ Domini H. quondam Regis Angliæ
'proavi Domini Regis, de foreſta.

41. And becauſe 'tis mentioned in this laſt Writ, That the *Foreſters in Fee*, and the *Verderors* of the Foreſt in the County of *Surrey*, ſhould appear at a certain

certain Day to make the Perambulation, the Commiſſioners iſſued forth a Writ to cite the ſaid Officers to be there, and that they ſhould ſummon the Inhabitants of that Part of the Foreſt which lay in that County, and where no Perambulation was made in the Reign of the King's Grandfather, That they ſhould be there on the Day and at the Place appointed, to ſee that the Perambulation be made as it ought to be, as it appears by this Writ.

'42. Thomas Tregorr, Johan' de Stonore, 'Johannes de Iſeild, & Johannes Dabnon, dilectis 'ſibi foreſtariis de feodo, & viridariis foreſtæ Dom' 'noſtri Regis in Com' Surrey, ſalutem: Cum in 'Parliamento Domini Regis apud Weſtm' con-'vocat', per Prælatos, Comites, Barones, & Com-'munitatem regni, aſſerentes, quod perambulatio-'nes tempore Domini Ed. nuper Regis Angliæ, 'Avi ſui, in foreſtis ſuis tam citra Trentam quàm 'ultra factæ, non fuerunt obſervatæ, eidem Do-'mino Regi ſupplicatum fuiſſet, ut ipſe eas ſic 'factas per dictum Avum ſuum conceſſ. & con-'firmatas, juxta eaſdem conceſſionem & confir-'firmation' in omnibus obſervari, & in foreſtis, 'ubi dictæ perambulat' remanent faciend', eas fieri, '& factas in formâ præd. confirmari curaret, idem 'Dom' Rex noſter aſſign. nos, tres vel duos no-'ſtrum quorum Johan' de Stonore unum eſſe vult, 'ad convocand' in præſentiâ noſtra, trium vel du-'orum noſtrum, quorum Johannem de Stonore 'unum eſſe vult, cuſtodem foreſtæ ſuæ citra Tren-'tam, vel ipſum quem poſuerit loco ſuo, & omnes 'foreſtarios de feodo, & viridarios foreſtarum ſua-'rum in dicto Com' Surrey, ad perambulation' 'rectam per viſum noſtrum, trium vel duorum 'noſtrum, quorum Johannem de Stonore unum 'eſſe vult & illorum in foreſtis ſuis in eodem Com' 'in quibus perambulationes dicti Avi ſui factæ non

' fuerunt, per Sacramentum tam militum quàm
' aliorum proborum & legalium hominum de
' eodem Com' per quos rei veritas melius ſciri, &
' perambulation' illæ fieri poterint, faciend' juxta
' tenorem Chartæ Dom' H quondam Regis Angliæ,
' proavi ſui, de foreſta, & quia Dominus noſter
' Rex nobis mandavit, quod convocari faceremus
' omnes foreſtarios de feodo, & viridarios foreſta-
' rum ſuarum in dicto Com' ac etiam illos in fo-
' reſtis ſuis in eodem Com' in quibus perambulat'
' tempore dicti Avi ſui factæ non fuerunt, ad pe-
' rambulationem rectam faciend', vobis mandamus
' ex parte Domini noſtri Regis, quod apud Certe-
' ſiam, die Lunæ prox' poſt quindena S. Johan'
' Baptiſtæ, perſonaliter interſitis, ad perficiend'
' exinde perambulat' illam faciend', ac etiam præ-
' munire faciat. omnes illos in foreſtis Dom' Regis
' in eodem Com' commorantes, in quibus peram-
' bulat' tempore dicti Avi ſui factæ non fuerunt,
' quod tunc ſint ibi ad diem præd' exinde perfici-
' end' ut perambulat' illæ per viſum illorum, no-
' ſtrum, & veſtrum fieri poſſet competenter.

43. The Commiſſioners, the Sheriff of *Surrey*, the Warden of the Foreſts on this ſide Trent, the Foreſters, Verderors, and other the Inhabitants within the Boundaries of the Foreſt, and many Knights and worthy Men, ſummoned by the Sheriff, did all appear at *Chertſey* on the Day appointed; and the Jury appearing, that is to ſay, *Henry Haſtings*, and *Henry de Montforth*, Knights; *Robert le Doll*, *Henry de Sunnerbus*, *Will' Huſe*, *John le Burres* the Elder, *Nicholas Bachiler*, *John Prodhoame*, *W. de Porkle*, *John* at *Stoket*, *Robert de Ditton*, *John de Kingſmode*; they were charged according to the Commiſſion.

44. Thereupon one *Swinnerton*, *Warden* of the Foreſts on this ſide *Trent*, produced a Commiſſion, and al-

alledged to the Jury, that he had an Inqueſt taken at *Lambeth* before certain Juſtices in the Reign of King *Ed.* the Grandfather of the preſent King, teſtifying, that the Place where they intended to make the Perambulation, was always a Foreſt, and pray'd the Jurors, That they would be adviſed on the Behalf of the King, concerning the ſame; and this was given in Evidence for the King, as it appears by a Copy of the ſaid Verdict, as follows:

'45. Perambulatio facta in Com' Surrey, de 'foreſta de Windſor, die Sabbati prox' poſt feſtum 'Sancti Georgii Anno regni Regis Ed. Octavo 'apud Lampeth coram Rogero Brainſon, Johanne 'de Barwick, Radulpho de Hengham, Will. Inge, '& Johanne de Crokeſſe, in preſentia Philippi de 'Say, Cleric' Juſticiar' foreſtæ & foreſtariorum & 'viridariorum foreſtæ præd' per ſacramentum Will' 'Annubeſas, Johannis de Bourſtow, Willi' de 'Bekewete, militum, Roberti de Doll, Rob' de 'Valeton, Willi' de Northwood, Johannis Prod-'home, Roberti Atteſonde, Michael de Wiſton, 'Richardi de Horton, Edmundi de Suteworth, '& Johannis de Farnham: Qui dicunt per ſacra-'mentum ſuum quòd totus Comitatus Surrey fuit 'foreſta tempore Henrici Regis proavi Regis nunc, 'unde idem Henricus obiit ſeiſitus, & ita remanſit 'foreſta uſque ad quartum diem Decembris Anno 'regni Regis Richardi primo qui tunc deforeſtavit 'quandam partem ipſius Comitatus per certas me-'tas quæ continentur in Charta ipſius Regis inde 'factâ, viz. inter Kanciam & aquam quæ dicitur 'Waye, & de monte de Guldedone quantum 'Com' Surrey durat verſus meridiem & reſiduum 'Com' prædicti, ſcilicet incipiend' ad aquam de 'Waye, per montem de Guldedone quantum 'Com' durat' verſus Aquilonem remanſit & eſt 'foreſta, & poſt ipſius Chartæ confectionem nihil

'affo-

' afforeſtatum vel occupatum fuit per ipſum Regem
' Richardum nec per Regem Johannem nec per
' aliquem alium, dicunt etiam quod non ſciunt
' quòd aliquid de Com' præd. afforeſtatum fuit
' per prædictum Henricum proavum Regis nunc.
' In cujus rei teſtimonium Jurat. ſigilla ſua appo-
' ſuer.

46. Thereupon the Commonalty alledged in Evidence for themſelves againſt the King, That a Perambulation was made in the ſaid County in the Times of *H.* Great Grandfather of the preſent King; by which it appeared, that the whole County of *Surrey* was diſafforeſted, and produced a Copy of the Inqueſt then taken, and of the Perambulation then made as follows:

' 47. Perambulatio facta in Com' Surrey, per ſa-
' cramentum Johan. de Waltone, Gilberti Dabnour,
' Gilberti de Abingworth, Nicholai Malemeyns,
' Hamonis de Gatton, Roberti de Watnill, Tho'
' de Hurtmere, Walteri Outworth, Willi' de Wan-
' ton, Willi' de Inſula, Johannes de Mikelham,
' & Johannis de Burſtowne; Qui dicunt apud
' Brudford ſunt diviſæ inter Berks, Southampton,
' & Surrey, & tunc diviſæ inter Berks & Surrey
' de Brudeford per viam quæ ducit de Fremely
' apud Wiſhemere & poſtea per crucem Rad. uſ-
' que Gomerichford per medium le Shete uſque ad
' Horton, & de Horton per la Lee verſus curſum
' aquæ, & inde juxta aquam quæ dicitur Sideway
' uſque de Thornhul, de Thornhul uſque ad Har-
' pesford, de Harpesford per aquam uſque ad Jugg-
' ſeild, & de Juggſeild uſque Lodertakehuch, ubi
' tres Com' conveniunt; viz. Surrey, Berks &
' Bucks. Et ſic dicunt quod totus Comitatus Surrey
' fuit extra foreſtam ſicut diviſæ content' Southamp-

'ton, Berks and Surrey condonant die quo Do-
'minus Hen. filius R. Johannis fuit coronatus.

48. And after the Commonalties produced in Evidence, the Copy of a Charter made by one *Alan*, late *Abbot of Cherſey*, and the Convent of the ſame place, to King *Henry*, the great Grandfather of our King, by which they granted certain Lands to that King to be within the Bounds of the *Foreſt*, notwithſtanding the *Perambulation* before made by the ſaid King *Henry*, as it more plainly appears by the Copy of the ſaid *Grant* as followeth.

'49. Omnibus ad quos præſens ſcriptum pervene-
'rit, Alanus Abbas de Cherteſey, & ejuſdem lo-
'ci conventus, ſalutem æternam in Domino: No-
'veritis nos conceſſiſſe, quod non obſtante peram-
'bulatione facta per præceptum Domini Henrici
'illuſtris Regis Angliæ, filii Regis Johannis, de fo-
'reſta de Windſor in Com. Surrey, omnes terræ
'& Boſci, & omnia tenementa contenta infra
'metas & diviſas ſubſcriptas, remaneant ipſi Do-
'mino Regi & Hæred' ſuis, Foreſta imperpetuum,
'viz. à ponte de Stanes per Regium chiminum, ſi-
'cut ſe extendit per mediam villam de Egeham
'uſque Harpesford, & de Harpesford uſque la
'Knapp, & de la Knapp uſq; Loderlakeſhack, ubi
'cadit in aquam Tamiſiæ, ita quod omnes terræ
'& Boſci, & omnia tenementa infra metas præd'
'& omnes homines manentes infra eaſdem metas,
'ex conceſſione ipſius Dom' Regis erunt quieti de
'regardo, ſalva ipſi Dom' Regi venatione ſua. In
'cujus rei Teſtimonium, præſenti ſcripto ſigill'
'noſtrum duximus apponendum, hiis teſtibus Do-
'mino S. Cantuarienſ. archiepiſcopo, Domino E.
'London J. Bathon. H. Lincoln. R. Sarum. R.
'Dunelm. Cancellar. Domini Regis, R. Ciceſtriæ,
'& W. Oxon. Epiſcopis: Hugone de Burgo Juſ-
'tic.

' tic. Domini Regis, Will. Mareſchall. Radulpho ' fil. Nich. Godfr. de Grancombe, & multis ' aliis.

50. And as a farther Evidence, the Commonalty produced a Certificate of ſeveral Knights, teſtifying, That the ſaid Abbot *Alan* and his Convent had made this *Grant* to King *Henry* after the *Perambulation* made by him; as it appeareth by the ſaid Certificate in theſe Words.

' 51. Omnibus ad quos præſens ſcriptum perve- ' nerit, Gilbert' de Abingworth, Rob. de Water- ' vil Wiſh. de Inſula, Nich. Malemciens, Johannes ' de Milkenham, Walter' de Cutteworth, ſalutem ' in Dom. Noveritis nos interfuiſſe & audiviſſe, ubi ' Alanus Abbas de Certeſey, & ejuſdem loci Con- ' vent' conceſſerunt Dom' noſtro Hen' illuſtri ' Regi Angliæ, fil. Regis Johannis, & chartam ſuam ' inde fecerunt, quod non obſtante perambula- ' tione facta per præceptum ipſius Dom' Regis de ' Foreſta de Windſor in Com' Surr', omnes terræ ' & Boſci & omnia tenementa contenta infra me- ' tas, & diviſas ſubſcript', remaneant ipſi Dom' Regi ' & hæred' Foreſta imperpetuum, viz. à ponte de ' Stanes per Regium Chim', ſicut ſe extendit per ' mediam villam de Egeham uſque Harpesford, & ' de Harpesford uſque la Knapp, & de la Knapp ' uſque Loderlake, ubi cadit in aquam Tamiſiæ; ' Ita quod omnes terræ & Boſci & omnia tenemen- ' ta infra metas præd' & omnes Homines manen- ' tes infra eaſdem metas, ex conceſſione ipſius Re- ' gis, erunt quieti imperpetuum de Regardo, ſalva ' ibidem ipſi Domino Regi venatione ſua. In cu- ' jus rei Teſtimonium præſenti ſcripto ſigilla noſtra ' duximus apponend', hiis Teſtibus, S. Cantuar' ' Archiepiſc. Domino E. London. J. Bathon. H. ' Lincoln. Ro. Sarum. R. Dunelm. Cancellar'

' Do.

' Domini Regis, R. Ciceſtren. & W. Exon, Epi-
' ſcopis: H. de Burgo Juſt' Domini Regis, Wil'
' Mareſchal, Rad', fil. Nich. Godfr. de Grand-
' combe, & multis aliis.

52. Which ſaid *Perambulation*, ſo made in the Reign of King *Henry*, together with the Abbot's *Charter*, and the Certificate concerning the ſame, do now remain in the King's Treaſure; and therefore the Commonalty were ready to vouch the Second if the Judges would permit.

53. But the Jury withdrew, after they had a Charge given, and conſulted a long time amongſt themſelves, and then gave their Verdict in manner following.

' 54. Qui dicunt ſuper ſacram. ſuum, quod tem-
' pore dicti Regis Edwardi Avi Domini Regis
' nunc, nulla perambulatio facta fuit in Foreſtis
' Com. de Surrey, & dicunt quod perambulatio
' faciend' nunc in Foreſtis illis, inchoanda eſt apud
' Waymouth, & abinde ſemper in longitudine
' Tamiſiæ uſque Loderlakeſhache, ubi tres comit.
' conveniunt., viz. Surrey, Berks, & Bucks, &
' abinde uſque Orientalem corneam parci de Wind-
' ſor', Et abinde uſque molendinum de Harpeſ-
' ford, Et abinde uſque Thornhill. Et abinde uſque
' Sydway, Et abinde uſque Le Lee, Et ſic uſque
' Horton, Et abinde per medium Laſhete uſque
' Gomerichesford, Et abinde uſque Rolneſcrouch,
' Et abinde uſque Wiſhemoredene, Et abinde uſq;
' Brudeford, ubi tres Com' conveniunt, viz. Surr'
' Berks & Southampt. Et ſic dicunt quod totus
' Com' Surr' eſt extra Foreſtam, & fuit tempore
' Regis H. proavi Dom' Regis nunc, ſicut patet
' per quandam perambulationem factam tempore
' ejuſdem Regis H. ſecundùm tenorem Chartæ Re-
' gis H. de Foreſta; Dicunt etiam, quod tempore
' Regis

'Regis Edwardi Avi dicti Regis nunc, quædam in-'quisitio capta' fuit apud Lampeth, coram Rogero 'Gravaſon. Joh. de Berewick, Radolpho de Heng-'ham, Wil. Juge & Joh. de Crokeſſe, per procu-'rationem Dom' Hug. le Deſpenſ. ſenioris homi-'nibus Com' præd' non præmunitis, exceptis qui-'buſdam perſonis in inquiſitione illa exiſten', vi & 'metu ejuſdem Hugonis ad hoc ductis, ad bundas '& metas in Foreſtis com. præd' faciend', qui nul-'lam perambulationem nec equitationem in Fo-'reſtis illis fecerunt, nec bundas nec metas in eiſ-'dem poſuerunt. In cujus, &c.

55. And becauſe the *Inquiſition* which was produced here in Evidence for the King againſt the Commonalty, was found by the aforeſaid Verdict, the Judges would not make any *Perambulation* according to the Boundaries found by the Jury, without taking farther Advice and Direction from the King: And thereupon they appointed another Day for the Warden of the Foreſts on this Side *Trent*, and for the *Verderors*, and the *Jury*, and all other *Inhabitants* of the Foreſt, who were then attending, to appear at *Weymouth*, *viz.* on *Monday*, being the Feaſt of St. *Matthew* next enſuing. And in the mean time the Judges would be adviſed, and meet on the Day and at the Place appointed.

56. And on that Day they all met, *viz.* Sir *Thomas Tregor*, the *Verderors*, the *Jury* and the *Inhabitants* of the Foreſt: But neither the *Warden* of the Foreſt or his *Deputy* did appear, nor any of the *Foreſters* who were ſummoned to attend on that Day.

57. At which Time and Place the Commonalty of *Surrey* produced the King's Writ directed to the aforeſaid Judges and Commiſſioners, giving them Authority to make a *Perambulation* notwithſtanding the aforeſaid *Inquiſition* taken in the Reign of

of King *Edward*, Grandfather of the King: And tho' the ſame was returned into the Court of *Chancery*, yet the King would not permit that *Perambulation* to be executed, before this other *Inquiſition* ſhould be taken and returned into that Court.

58. And thereupon this *Inqueſt* was taken by the Advice and Direction of the King, that Right and Juſtice might be done; as it appears by his following Writ, with a *non obſtante*.

'59. Edwardus, Dei Gratia, Rex Angliæ, Dominus Hiberniæ, & dux Aquit', dilectis, & fidelibus ſuis, Thomæ Tregoſt, Johanni de Stonore, Johanni de Iſeild, & Johanni Dabnor, ſalutem: Cum nuper ad proſecution' Prælatorum, Comit' & Baronum, & communitatis Regni noſtri Angl' nuper nobis in Parliamento noſtro apud Weſt' convocat' ſuggeren', perambulationes tempore Domini Edwardi quondam Regis Angliæ Avi noſtri, in Foreſtis ſuis, tam citra Trentam quàm ultra factas, obſervaras non fuiſſe, & nobis ſupplicantium; ut nos eas per dictum avum noſtrum ſic factas, conceſſas, & confirmatas, juxta eaſdem conceſſiones & confirmationes obſervari, & in Foreſtis ubi dict' perambulationes rem' faciend', eas fieri, & factas in forma prædicta confirmari, curaremus, Aſſignavimus vos, tres & duos veſtrum, quorum præfat' Johan' de Stonore unum eſſe volumus, ad convocand' in præſentia veſtra, trium vel duorum veſtrum, quorum præfat Johannem de Stonore unum eſſe volumus, cuſtodem foreſtæ noſtræ ultra Trentam, vel ipſum quem ponere vellet loco ſuo, Et omnes Foreſtar. de feod' & viridar. Foreſtarum noſtr. in Com. Surrey ad perambulationem rectam per viſum veſtrum, trium vel duorum veſtrum, quorum vos præfat. J. de Stonore unum eſſe volumus, & ill' in Foreſtis noſtris in eodem Comitat. in quibus perambulat. tem-

'pore

' pore dicti Avi noſtri factæ non fuer', per ſacram.
' tam militum quàm aliorum probor. & leg' homi-
' num de eodem Com', per quos rei veritas meli-
' us ſciri, & perambulationes illæ fieri poſſunt, fa-
' ciend' juxta tenorem Chartæ Domini H. quon-
' dam Regis Angliæ, proavi noſtri, de Foreſta: Et
' vobis mandamus, quod ad certos dies & loca,
' quod vos, tres vel duo veſtrum, quorum vos præ-
' fat. Joh. de Stonore unum eſſe volumus, ad hoc
' provideritis, præmiſſa faciatis in forma prædicta.
' Ita quod perambulationes illæ prædict' fierent, &
' nobis retorn' citra feſtum Nativitatis Domini,
' prout in literis veſtris patent. inde vobis confect'
' plenius continetur: Ac etiam ex parte communi-
' tatis com' prædict' accepimus, quod licet vos in-
' quiſit. ſuper metas & bundas Foreſtar. in Com.
' prædicto, prætextu aſſignat. noſtræ prædict. fece-
' retitis, perambulationes tamen juxta metas &
' bundas in inquiſit. illa contentas, prætextu qua-
' rundam inquiſit. tempore dicti Avi noſtri de hu-
' juſmodi metis & bundis factar', ut dicitur, hu-
' cuſque facere diſtuliſtis, & nobis ſit ſupplicatum,
' ut ſuper hoc remedium apponamus: Nos ea quæ
' in dicto Parliamento noſtro ſic conceſſa fuerunt,
' volentes executioni debitæ demandari, vobis
' mandamus, quod perambulationes in Foreſtis
' noſtris in com. prædicto, juxta formam aſſign'
' noſtræ præd. cum celeritate qua poteritis faciatis
' inquiſit. tempore dicti Avi noſtri inde, ut dicitur,
' factis non obſtantibus, & eaſdem perambulationes
' ſic factas, ad terminum præd, in Cancellaria
' noſtra juxta formam aſſign. noſtræ ſupradictæ re-
' torn. Nolumus faciend. executioni demandentur,
' antequam in Cancellar. noſtra nobis retornarent.
' & viſis inquiſit. tempore dicti Avi noſtri ſic
' capt. ulrer. inde fiat, quod de conſilio noſtro ra-
' tionabiliter fore videmus faciend'. Teſte meipſo

' apud Stanbope, primo die Aug. An. Reg. noſtri
' primo.

60. By vertue of which Writ the *Verderers* of the Foreſt in that County, the *Jury* and the *Inhabitants* of the ſaid Foreſt made a *Perambulation* on the Day aforeſaid, by the View of the King's Juſtices, without regarding the abſence of the *Warden* of the Foreſts on this Side *Trent*, or his *Deputy*, for neither of them was there. The manner of which *Perambulation* was as followeth.

' 61. Videlicet, Quod de Weymouth in longi-
' tudine Tamiſiæ uſque Stanesbridge: Et abinde
' in longitud' Tamiſiæ uſq; ad Loderſhach, ubi
' tres Com' conveniunt Surr' Berks & Bucks, Et ab-
' inde dimittendo Com' Berk. à dextra parte uſq;
' Stronhuldwel, & abinde uſq; les Quelmes, & ab-
' inde uſq; Orientalem partem corneram parci de
' Windſor', & ſimpet in longitud' palatii ejuſdem
' parci uſq; ad molendinum de Harpesford: Et ab-
' inde per eundem palatium uſq; Auſtralem por-
' tam ejuſdem parci, & abinde tranſmeando regiam
' viam uſq; Wyndwygſhal: Et abinde uſq; interi-
' orem portam de Bromhal: Et abinde uſque
' Thornhul: Et abinde per viam quæ dicitur Syd-
' way, in longitudine ejuſdem viæ, & abinde uſq;
' la Lee: Et ſic uſq; Horton, & abinde per medium
' la Shete per Gomericheford, quæ in antiquo tem-
' pore vocatur Bachetesford.

62. And they went no further that Day, but lay at *Backſhote* that Night; and the next Day, being *Tueſday*, they went.

' 63. A Gomerichford uſque ad Rovelſcrouch, &
' abinde declinando in dextra parte uſq; Wilmorſ-
' den, & abinde uſque Brudesfordbrigge ubi tres
' Com'

' Com' conveniunt, viz. Surrey, Berks & South-
' ampton.

64. And the Judges in ſeveral places of this *Perambulation* cauſed Proclamations to be made, That no Man ſhould *hunt* or commit any *Treſpaſs* in the Foreſt under pretence of this *Perambulation*, until the ſame was returned into the Court of *Chancery*, and confirmed by the King and his Council.

65. And afterwards they made a Report of every Thing that they had done, according to the purport of the Commiſſion firſt granted to them, and made a Return thereof under their Seals into the Court of *Chancery*, a long Time before the Day given for that Purpoſe: A Copy of which Record is as followeth:

' 66. Perambulatio Foreſtæ Comitatus Surrey,
' juxta metas & bundas per inquiſitionem captam
' coram Thoma Tregorr, Johan. de Stonore, Jo.
' de Ifeld, & Jo. Dabnon, ad perambulationem il-
' lam factam aſſignat', Anno Regni Regis Edwar-
' di tertii à Conqueſt' primo, poſtea per viſum
' præd' Joh. de Stonore, Johan. de Iſeld, & Johan'
' Dabnon.

' Dominus Rex mandavit Tho. Tregorr, Joh.
' de Stonore, Johan. de Iſeld, & Johan. Dabnon,
' breve ſuum in hæc verba.

' Edwardus, Dei Gratia, Rex Angliæ, Dominus
' Hiberniæ, & dux Aquit. dilectis, & fidelibus ſuis,
' Thomæ Tregorr, Johan. de Stonore, Johan. de
' Iſeld, & Johan Dabnon, ſalutem: Sciatis quod
' cum in Parliam. noſtro nuper apud Weſt. con-
' vocat' per Prelatos, Comites, Barones, & Com-
' munitatem Regni noſtri, aſſerentes, quod per-
' ambulationes tempore Domini Ed. quondam Re-
' gis Angliæ, Avi noſtri, in Foreſtis ſuis, tam ci-

' trà

'tra Trent. quam ultra factæ, non fuerunt obſervatæ
'nobis fuiſſet ſupplicatum,, ut nos eas ſic factas,
'per dictum Avum noſtrum conceſſas, & confir-
'matas, juxta eaſdem conceſſionem & confirma-
'tionem in omnibus obſervari: Et in Foreſtis ubi
'dictæ perambulationes remanent faciend', eas fieri
'& factas in forma prædict. confirmari curaremus,
'Aſſignavimus vos, tres vel duos veſtrum, quorum
'vos præfatum Johannem de Stonore unum eſſe
'volumus, ad convocand' in præſentia veſtra,
'trium vel duorum veſtrum, quorum vos præfat'
'Johannem de Stonore unum eſſe volumus, cuſto-
'dem Foreſtæ noſtræ citra Trentam, vel ipſum
'quem poſuerit loco ſuo, & omnes Foreſtar. de
'feodo, & Viridarios Foreſtarum noſtrarum in
'Com' Surrey, ad perambulationem rectam per
'viſum veſtrum, trium vel duorum veſtrum, quo-
'rum vos præfat. Johannem de Stonore unum eſſe
'volumus, & illorum in Foreſtis noſtris, in eodem
'Com. in quibus perambulat. dicti Avi noſtri fac-
'tæ non fuerunt, per Sacr. tam militum quam alio-
'rum proborum & legalium hominum de eodem
'com. per quos rei veritas melius ſcir. & perambu-
'lationes illæ fieri poterunt, faciend', juxta teno-
'rem Chartæ Domini H. quondam Regis Angliæ,
'proavi noſtri, de Foreſta: Et ideo vobis manda-
'mus, quod ad certos dies & loca, quos vos, tres
'vel duo veſtr. quorum vos præfat' Johannem de
'Stonore unum eſſe volumus, ad hoc providerit.
'peram' faciat' in forma præd. ita quod perambu-
'lat' præd. fiant, & nobis retorn. citra Feſt' Nat'
'Dom' prox. futur. Mandamus etiam Vic. Com'
'noſtri Surrey præd', quod ad certos dies & loca
'quos vos, tres vel duo veſtr', quorum vos præfat'
'Johan' de Stonore unum eſſe volumus, ei ſciri
'faciatis, venire faciat coram vobis, tribus vel duo-
'bus veſtrum, quorum vos præfat. Johan. de Sto-
'nore unum eſſe volumus, tot & tales, tam milites,

'quam alios probos & legales homines de Com.
'præd. per quos rei veritas meliùs ſciri, & per-
'ambulationes præd. fieri poterunt, ſicut prædic-
'um eſt, & perambulationem illam diſtinctè &
'apertè ſic factam, nobis ſub ſigillis veſtris, trium
'vel duorum veſtrum, quorum præfatum Johan.
'de Stonore unum eſſe volumus, & ſigillis eorum,
'per quos factæ fuerunt, reportetis ante feſtum ſu-
'pradictum, ut eam confirmemus juxta conceſſio-
'nem noſtram dictis magnatibus inde factam. In
'cujus rei teſtimonium has literas noſtras fieri feci-
'mus patentes. Teſte meipſo apud Weſtm' primo
'die Martii, Anno Regni noſtri primo.

68. By vertue of which Writ, the Judges commanded the Sheriff of *Surrey*, That he would cauſe to come before them at *Chertſey* on *Monday* next, after the Feaſt of St. *John Baptiſt*, as well Twenty four Knights, as other good and lawful Men of the ſaid County, by whom the Truth of the Matter, and the *Perambulations* ſhould be the better known and made, according to the Purport of the Writ: And they ſignified the Day of their Meeting both to the *Warden* of the Foreſts on this Side *Trent*, and to all the *Foreſters* in Fee, and to the *Verderors* of the Foreſt in the ſaid County, commanding them to be then and there preſent; and that the *Verderors* would ſummon all the *Inhabitants* of the Foreſt, where no *Perambulation* was made in the Reign of the King's Grandfather; that they likewiſe muſt be there to make a right *Perambulation* in manner aforeſaid.

69. And afterwards, in the preſence of the ſaid Judges, came *John Swinton* Knight, whom *Thomas Wake*, Warden of the Foreſts on this Side the *Trent*, had made his *Deputy*, by Letters Patents, which he produced in theſe Words.

'70.

'70. *Thomas Wake*, Lord of *Lydel*, Juſtice of the 'Foreſts on this Side *Trent*, to all thoſe to whom 'theſe Letters ſhall come, wiſheth Health, *&c.* 'Know ye that we have inſtituted and ordained 'our good Friend *John Swinton* Knight, to be our 'Depury in the ſaid Foreſts, and to do every 'thing there in our Name, belonging to us to do: 'Wherefore we charge and command you in the 'Name of our Lord the King, that you attend 'our ſaid Deputy in thoſe Foreſts. In Witneſs 'of what we have done to the ſaid *John*, we have 'hereunto made theſe our Letters Patents, to con-'tinue during Pleaſure. Given at our Manor of '*Pyngbe*, the 20th Day of *April*, in the firſt Year 'of the Reign of King *Edward* the Third, after 'the Conqueſt.

'71. Et Henricus de Stogton, Galfr' at Donne, '& Robertus de Immoworth, Viridar. Foreſtar. il-'larum veniunt, & teſtatum eſt per eoſdem Viri-'darios, quòd non eſt aliquis Foreſtarius de feodo 'in Foreſtis prædict', alii tamen Foreſtarii, qui 'non ſunt de feodo, ſcr. Robertus at Lake, & Ro-'bertus de Biffleţe, & Thom. de Keneţon, veniunt, '& ſimiliter alii in Foreſtis p ædict' commorantes, 'viz. Rowlandus de Wicford, R. de Trotteſworth, 'R, de Wike, W. de Withwel, Robertus de Cer-'teſeye, Simon de Woodham, Thom. de Freme-'leſworth, Thom. de Hamme, Henricus de Bergh, 'Williel. de Brudneſtone, Robertus de Kerſwell, 'Gilbertus de Withewel, Stephanus de Froillebu-'rie, Robertus Myles, Thom. de Wonborne, Jo-'hannes de Watingford, Petrus Payne, Walter. at 'Church de Baſſeligh veniunt. & Vicec. Surrey ve-'nire fecit Henricum Huſe, & Henr. de Monte 'forti, milites, Robertum le Doll, Henricum de 'Somerburie, Willielmum Huſe, Johannem de

‘ Bures ſeniorem, Nicholaum de Bachilleu, Johan-
‘ nem Prodehome, Willielm. de Porkle, Johannem
‘ at Stoker, Robertum de Ditton, & Johannem de
‘ Kingeſnode, Jur'. Et poſtquam iidem jurati fue-
‘ runt ad veritatem ſuper præmiſſis dicendam, præ-
‘ dictus Johannes de Swinerton ſuggeſſit eiſdem Ju-
‘ rat. quòd tempore Regis Ed. Avi Dom. Regis
‘ nunc, capta fuit quædam inquiſit. de metis &
‘ bundis Foreſtar. Com. prædict' coram quibuſ-
‘ dam fidelibus ipſius Regis ad inquiſit: illam capi-
‘ end. aſſignat. quam inquiſit. idem Johannes aſſe-
‘ rit, ut intellexiſſet, in curia Domini Regis reror-
‘ natam, & ab hoc requiſivit eoſdem Jurator. quòd
‘ præd. inquiſitio latere non debuit, ex parte Do-
‘ mini Regis quod ipſi in inquiſit. iſta de prædictis
‘ metis & bundis faciend' circumſpectè agerent, &
‘ porrex. quand. ſchedulam, formam illius inquiſi-
‘ tionis continentem: Et prædict' Jurator. habito
‘ inter eos diutino conſilio dicunt per ſacram.
‘ ſuum, quod tempore Regis E. Avi Domini Re-
‘ gis nunc, nulla perambulatio facta fuit in Foreſtis
‘ Com' Surrey, & dicunt quod perambulat. faciend.
‘ nunc in Foreſtis illis inchoanda eſt apud Way-
‘ mouth, & abinde ſemper in longitudine Tamiſiæ
‘ uſque Loderlakeſhache, ubi tres Com' conveniunt
‘ *viz.* Surrey, Berk. & Buck. Et abinde uſque Ori-
‘ entalem corneram parci de Windſor', & abinde
‘ uſque molendinum de Harpesford, & abinde uſ-
‘ que Thornhul, & abinde uſque Sydway, & abin-
‘ de uſque la Lee, & ſic uſque Horton, & abinde
‘ per medium Laſhete uſque Gomerichesford, &
‘ abinde uſque Rolneſcrouch, & abinde uſque
‘ Wiſhemoredene, & abinde uſque Brudeford, ubi
‘ tres Com. conveniunt, viz. Surr. Berk. & South.
‘ Et ſic dicunt quod totus Com' Surr. eſt extra Fo-
‘ reſtam, & fuit tempore Regis H. proavi Domin.
‘ Regis nunc, ſicut pater per quandam perambula-
‘ tionem factam tempore ejuſdem Regis H. ſecun-
‘ dùm

' dùm tenorem Chartæ ejuſdem Regis H. de Fo-
' reſta: Dicunt etiam, quod tempore Regis Ed-
' wardi Avi dicti Dom. Regis nunc, quædam inqui-
' ſitio capta fuit apud Lampeth, coram Rogero
' Gravaſon, Johanne de Berwicke, Radolpho de
' Hengham, Will. Jugge & Joh. de Corkeſley, per
' procurationem Dom. Hug. le Diſpenſ. ſenioris
' hominibus Com' præd' non præmunitis, except'
' quibuſdam perſonis in inquiſitione illa exiſten', vi
' & metu ejuſdem Hugonis ad hoc ductis, ad bun-
' das & metas in Foreſtis in Com' præd' faciend',
' qui nullam perambulationem nec equitationem in
' Foreſtis illis fecerunt, nec bundas nec metas in
' eiſdem poſuerunt: Et quia aliàs tempore Regis
' Ed. Dom. Regis nunc Avi capta fuit inquiſitio de
' hujuſmodi metis & bundis, prout liquet per in-
' quiſitionem iſtam modo captam, & etiam ex dic-
' tis prædict. Johannis de Swinerton: Ideo præ-
' dictus Thom. Tregor & ſocii ſui, perambulation.
' in Foreſtis prædict. juxta metas & bundas in in-
' quiſitione iſta modo capt. content', facere diſtu-
' lerunt, uſque diem Lunæ in feſto Sancti Matthæi
' apud Weymouth, ad interim conſulend' & deli-
' berand', qualiter in hoc caſu in præmiſſis ſit fa-
' ciend'. Quem quidem diem præfixerunt præfatis
' Johanni de Swinerton, Viridar. Foreſtar. Jurator.
' & aliis de Foreſtis illis ibidem exiſten. ut præ-
' dictum eſt quod ipſi ibid. tunc intereſſent. Poſ-
' tea ad diem illum prædict', Johannes de Stonore,
' Johannis de Iſeld, & Johannes Dabnon, vene-
' runt ad locum prædict'. & Cuſtos Foreſtæ Dom.
' Regis citra Trentam, nec ejus locumtenens, nec
' aliquis Foreſtarius Foreſtarum prædictarum, ſcili-
' cet, Viridar. Jurator. prædict. & alii in Foreſ-
' tis illis commorantes venerunt. Et ſuper hoc
' Dom. Rex mandavit Thomas Tregor, & ſociis
' tribus vel duobus eorum breve ſuum, quod
vocatur non obſtante ut patet ſupra.

' Et ideo prædicti Viridarii, Jurator. & alii in
' Foreſtis prædict' commorantes, per viſum præ-
' dictorum Johannis, Joh. & Johannis non expec-
' tata præſentia cuſtodis Foreſtæ vel ejus locum-
' tenentis, ad prædict' perambulationes faciend'
' proceſſerunt in hunc modum, viz. de Weymouth
' in longitudine Tamiſiæ, uſque Stanesbridge. Et
' abinde in longitudine Tamiſiæ uſque Loderlake-
' ſhache, ubi tres com. conveniunt, viz., Surrey,
' Berk. & Buck. Et abinde dimittendo com. Berk.
' à dextra parte uſque Stonybelwel, & abinde uſq;
' les Quelms, & abinde uſq; Orientalem cornerum
' parci de Windſor', & inſuper in longitudine pa-
' latii ejuſdem parci uſque molendinum de Harpeſ-
' ford, & abinde per eundem palatium uſq; Auſtra-
' lem portam ejuſdem parci, & abinde tranſme-
' ando Regiam viam uſque Windwingſhul, & ab-
' inde uſque interiorem partem de Bromhall, & ab-
' inde per viam quæ dicitur Sydeway in longitu-
' dine ejuſdem viæ, & abinde uſque La Lee, & ſic
' uſq; Horton, Et abinde per medium la Shete uſq;
' Gomerichesford, & abinde uſq; Rolneſcrouche,
' & abinde declinando in dextra parte uſque Wy-
' ſhemorſeden, & abinde uſque Brudefordesbridge,
' ubi tres com' conveniunt, videlicet, Surrey, Berk.
' & South. Et ita per prædictas metas & bundas
' facta eſt perambulatio Foreſtarum prædict' in
' Com' prædict'. Et præfat. Joh. & ſocii ſui in
' diverſis locis, ubi videbatur eis faciend', publicè
' proclamar. fecerunt, inhibent. omnibus & ſingu-
' lis ex parte Domini Regis, ne quis venaret ſeu
' aliquid malefaceret in prædict. Foreſtis, prætextu
' perambulat', antequam perambulatio illa per
' Dominum Regem & Conſilium ſuum confirma-
' retur, prout in prædicto Parliamento ipſius Do-
' mini Regis fuit ordinat', ſub pœna quæ incubue-
' rit.

72.

72. And afterwards the Commons of the ſaid County, (the King being at *Pomfret*) petitioned the Lord Chancellor, Sir *John Hotham*, then Biſhop of *Ely*, in full Court, that he would ſee right done concerning this *Perambulation*, ſo returned by the Juſtices before him; and that the ſame might be confirmed by the King's Charter, according to the firſt Charter, which he granted for the Confirmation of the *Perambulations*, in the firſt Year of his Reign, in a Parliament then held at *Weſtminſter*; which Charter was now produced, by which it did appear, that it was the King's Pleaſure to confirm it.

73. And the ſaid Lord Chancellor having called to his Aſſiſtance the moſt eminent Clerks of the *Chancery*, *viz.* *Henry de Celiff*, Sir *William de Harleſtone*, Sir *Michael de Wath*, Sir *Thomas de Eveſham*, Sir *Henry de Edenſtow*, Sir *Hugh de Bourgh*, and Sir *Adam Brome*, and others: The ſaid Inquiſition was read in Court, and afterwards they conſulted together what was beſt to be done in the behalf of the *King*; and at laſt they decreed, that the ſaid *Commonalty* ſhould ſue out a Writ to ſummon the Conſtable of *Windſor-Caſtle* to appear before them in the Court of *Chancery* on a certain Day, to ſhew what he could ſay for the *King*, why the ſaid *Perambulation* ſhould not be confirmed.

74. And becauſe the ſaid Writ was ſealed before *John de Lyle* (who was then Conſtable of the ſaid Caſtle) came from *Pomfret*, and was delivered to the Chamberlain in full Court; and becauſe the ſaid Conſtable was then preſent, the Lord Chancellor told him, He might go and adviſe with the *King* if he had any thing to object why the ſaid *Perambulation* ſhould not be confirmed; and thereupon he had a Week's Time given him to ſpeak with the

King and his *Council* at *Pomfret* concerning this *Affair*.

75. And thereupon the ſaid *Conſtable* went and took Advice accordingly: And afterwards he came into the Court of *Chancery*, and then the Court asked him, If he had any Thing to ſay for the *King*: And he alledged in Court that an *Inqueſt* was taken at *Lamphet h.* in the Reign of King *Edward*, the Grandfather of the preſent *King*, of certain *Meets* and *Bounds* of the Foreſt of *Windſor*, in the County of *Surrey*, before certain good and lawful Men, deputed by the *King* for that purpoſe, which was produced before Sir *Thomas Tregor* and his *Companions* by *John de Swinerton*, Deputy *Warden* of the Foreſts on this Side *Trent*, and prayed that the Court would conſider in the *King*'s Behalf.

76. The *Commonalty* alledged, That in the *Inquiſition* of that *Perambulation* now returned before the Judges, there was no mention made of the ſaid *Inqueſt*.

77. And afterwards the Lord *Chancellor* asked the *Conſtable* if he had any thing elſe to ſay for the *King*; who replied he had not: For which Reaſon he was at this Time diſmiſſed, and required to appear on another Day, and that he would be well adviſed in the mean Time.

78. And now the *King* came out of the North into the Weſt Parts of *England*, with the Lord Chancellor attending him: And the *Commonalty* ſtill preſſing this *Affair* until the *King* came to *Hayles*, and from thence to *Wincheombe*, at which Place the Court of *Chancery* was kept: And *Roger Mortimer*, Earl of *March*, and other Perſons of Quality, ſitting near the Lord Chancellor, the ſaid *Commonalty* petitioned him for Juſtice, and if he pleaſed, to decree that the ſaid *Perambulation* might be confirmed.

79. Whereupon the ſaid *Chancellor* cauſed the ſaid *Inqueſt* to be read before the aforeſaid Earl of *March* and others, and they having conſulted together, at laſt they told the *Commonalty* that the *Nobility* and the *King*'s Council would be the next Week at *Glouceſter*, where King *Ed.* the *King*'s Father was to be buried, and then they would adviſe with the *King* and the *Peers* there preſent, that Right and Juſtice might be done.

80. And thereupon they were adjourned to *Glouceſter*, and the *Commonalty* came afterwards from *Winchcombe* to *Chiltenham*, and from thence to *Glouceſter*, and there they proſecuted this Buſineſs, and prayed that it might be confirmed.

81. The *King* and the *Nobility* then preſent, *viz. Henry de Lancaſter* Marſhal, *Edmond* Earl of *Kent*, *John* Earl *de Grane*, *Roger* Earl of *March*, and other Barons and Knights, being of the *King*'s Privy Council, cauſed the *Chancellor* to recite all the Proceedings in this *Affair*; and at laſt it was agreed, that the ſame ſhould be confirmed according to the *King*'s Grant in Parliament; and the ſaid *Chancellor* was commanded to deliver the ſame to the *Commonalty*; and thereupon another Day was appointed, becauſe the *King* went from *Glouceſter* to *Tewkesbury*, and from thence to *Worceſter*, where he kept his *Chriſtmas*.

82. And there the *Commonalty* prayed Execution as aforeſaid, and the *Chancellor* ordered the Charter to be engroſſed; and when it was written, he was ordered not to Seal it till the *King*'s Pleaſure was known, and not without his *Warrant* for that purpoſe.

83. And the *Commonalty* having renewed their *Petition* on the *Friday* following, being *Chriſtmas*-Day: And the *King*'s *Will* being known, and his *Warrant* obtained, the ſaid *Charter*, which confirmed the *Perambulation*, was ſealed on *Saturday*, being

St.

St. *Stephen's* Day, in a little Houſe near the *Severn*, belonging to the Prior of *Worceſter*, where the *Chancellor* on the ſame Day ſealed all other *Writs*; and thereupon they having paid the *Fees* for the Seal, had their *Charter* confirmed, as it appears by the Exemplification thereof in the Words following.

'Edwardus, Dei Gratia, Rex Angliæ, Dominus 'Hiberniæ, & dux Aquitaniæ, omnibus ad quos 'præſentes literæ pervenerint, ſalutem: Sciatis, 'quod cum nuper in Parliamento noſtro apud 'Weſtm. convocato, ad ſupplicationem Prælato-'rum, Comitum, Baronum, & Communitatis Reg-'ni noſtri, per literas noſtras patentes conceſſ. 'quod perambulat. tempore Domini Ed. quondam 'Regis Angliæ, Avi noſtri, in Foreſtis ſuis, tam ci-'tra Trentam quam ultra factæ, & per ipſum Avum 'noſtrum conceſſæ & confirmatæ ſecund' metas & 'bundas in eiſdem perambulat' contentas obſer-'ventur imperpetuum & teneantur, & quod per-'ambulat' in Foreſtis, in quibus tempore dicti 'Avi noſtri factæ non fuerunt, per fideles noſtros 'ad hoc aſſign. fierent, ſub ea celeritate qua fieri 'poſſent bono modo: Et quod nos perambulatio-'nes illas, cum factæ fuerint, & nobis returnatæ 'ſub metis & bundis, quas in eiſdem inveniri con-'tigerit, pro nobis & hæred. noſtris confirmari & 'approbare faceremus, prout in literis noſtris præ-'dict. pleniùs continetur, ac poſtmodum ad re-'quiſitionem Commun. com. Surrey nobis ſugge-'rent', quod perambulat. in Foreſtis noſtris in eo-'dem Com. factæ non fuerunt, Volentes conceſſi-'onem noſtram prædictam effectum mancipari, aſ-'ſignavimus dilectos & fideles noſtros Tho. Tregor, 'Joh. de Stonore, Joh. de Iſeild, & Joh. de Dab-'non, ad perambulationem factam in Foreſtis no-'ſtris in eodem Com. in quibus perambulationes

'tem-

' tempore dicti Avi noſtri factæ non fuerunt per ſa-
' cram' tam militum quam aliorum probor' & le-
' galium hominum de eodem com. per quos rei ve-
' ritas melius ſciri & perambulationes illæ melius
' fieri poſſent, faciend. juxta tenorem Chartæ
' Dom. H. quondam Regis Angliæ proavi noſtri,
' de Foreſta: Ac iidem Thomas, Johannes, Johan.
' & Johannes. perambulat. hujuſmodi in eodem
' com. prætextu aſſignat. noſtræ eis inde ſic factæ,
' fecerunt, & eas nobis in Cancellar. noſtram mi-
' ſerunt, in forma ſubſcripta.

' Perambulatio Foreſtæ Comitatus Surrey, juxta
' metas & bundas, per inquiſitionem inde captas
' coram Thoma Tregor, Joh. de Stonore, Joh. de
' Iſeild, & Joh. Dabnon, ad perambulationem il-
' lam faciend' aſſignat. Ac poſtea facta per viſum
' prædicti Johan. Joh. & Johan. ac per ſacram. H.
' Huſe, Henrici de Monteforti, Militum, Ro. le
' Dol. Henrici de Somerbury, Will' Huſe, Joh. de
' Bures ſen, Mich. de Batchiller, Johan. Prode-
' home, Will' de Porkle, Joh. Stoket, Rob. le
' Ditton, & Joh. de Kingſwood Jurat. qui dicunt,
' quod tempore dicti avi noſtri nulla perambulatio
' facta fuit in Com. Surr. ſed perambulatio faciend'
' in Foreſtis illis inchoanda eſt apud Waymouth,
' Et abinde ſemper in longitudine Tamiſiæ uſq;
' Loderlakeſhach, ubi tres com. conveniunt, viz.
' Surr. Berk. & Buck. Et abinde uſq; Orientalem
' corneram parci de Windſore, & abinde uſq, mo-
' lendinum de Harpesford, & abinde uſq; Thorn-
' hull, & abinde uſq; Sideway, & abinde uſq; la
' Lee, & ſic uſque Horton, & abinde per medium
' la Shete uſq; Gomeriſhford; & abinde uſque Rol-
' neſcrouch, & abinde uſq; Wiſhemoreſden, & ab-
' inde uſque Brudeford ubi tres Com' conveniunt,
' viz. Surrey, Berk, & South. Et quod totus Com'
' Surrey eſt extra Foreſtam, & fuit tempore dicti
' Regis Henrici proavi noſtri.

' Nos

' Nos perambulationem prædict. acceptantes, eam
' pro nobis & hæred. noſtris, quantum in nobis
' eſt, ratificamus, approbamus, concedimus, &
' confirmamus, ſecundum metas & bundas prædic-
' tas imperpetuum obſervand': Salvo ſemper in
' omnibus jure noſtro. In cujus rei teſtimonium
' has literas noſtras fieri fecimus patentes. Teſte
' meipſo apud Wigorn. xxvi. die Decemb. Anno
' Regni noſtri primo.

Per ipſum Regem & Conſ.

85. And afterwards the ſaid *Commonalty* attended the Chancellor to *Solyhul* and *Ardern*, and there they had a Duplicate of the ſaid Charter, the one was ſealed with *green Wax*, which is kept in *Chertſey Abbey*, and the other was ſealed with *white Wax*, which they kept themſelves.

86. And becauſe it was the King's Will that the Charter, confirming the ſaid *Perambulation*, ſhould be read publickly in the County, *Proclamation* was made, that it ſhould be firmly kept according to the Boundaries, ſaving to himſelf Forty Days to hunt the Beaſts out of the *Purlieus* into the *Foreſt*.

87. And for that Purpoſe he iſſued forth a Writ directed to the Sheriff of *Surrey*, the tranſcript whereof is as followeth.

' 88. Edwardus Dei Gratia Rex Angliæ, Domi-
' nus Hiberniæ, & dux Aquit. vicec. Surrey ſalut'
' Cum nuper in Parliamento noſtro apud Weſtm'
' convocato, ad ſupplicationem Prælatorum, Comi-
' tum' Baronum, & Communitatis Regni noſtri,
' per literas noſtras patentes conceſſ. quod peram-
' bulat. tempore Domini E. quondam Regis Angl.
' Avi noſtri in Foreſtis ſuis, tam citra Trentam
' quam ultra factæ, & per ipſum Avum noſtrum
' conceſſæ & confirmaræ ſecund' metas & bundas

' in

' in eiſdem perambulat. contentas obſervarentur
' imperpetuum, & tenerentur, Et quod perambul.
' in Foreſtis, in quibus tempore dicti Avi noſtri
' factæ non fuerunt, per fideles noſtros ad hoc
' aſſignatos fierent ſub ea celeritate qua fieri
' poſſent bono modo: Et quod nos perambulatio-
' nes illas, cum factæ fuerint, & nobis returnatæ
' ſub metis & bundis, quas in eiſdem inveniri con-
' tigerit, pro nobis & hæredibus noſtris confirmari
' & approbari faceremus, prout in literis noſtris
' plenius continetur; Ac poſtmodum ad requiſitio-
' nem Communitatis Com' Surrey nobis ſuggerent.
' quod perambulatio in Foreſtis noſtris in eodem
' Com' factæ non fuerunt, Volentes conceſſionem
' noſtram prædictam effectam mancipari, Aſſig-
' navimus quoſdam fideles noſtros ad perambulat'
' rectam in foreſtis noſtris in eodem Com', in qui-
' bus perambulat' tempore dicti Avi noſtri factæ
' non fuerunt, per ſacramentum tam militum quam
' aliorum proborum & legalium hominum de
' eodem Com', per quos rei veritas melius ſciri, &
' perambulat' illæ melius fieri poſſent, faciend', jux-
' ta tenorem Chartæ Dom' Henrici quondam Regis
' Angl' proavi noſtri de foreſta: Iidem fideles noſtri
' perambulat' hujuſmodi in eodem Com' prætextu
' aſſignationis noſtræ inde eis factæ, fecerunt, &
' eas nobis in Cancellaria noſtra miſerunt: Ac nos
' per literas noſtras patentes dictam perambulatio-
' nem acceptavimus, & eam pro nobis, & hæred'
' noſtris, quantum in nobis eſt, ratificavimus, ap-
' probavimus, conceſſimus, & confirmavimus,
' ſecundum metas & bundas in dicta perambula-
' tione contentas imperpetuum obſervand': Salvo
' ſemper in omnibus jure noſtro, prout in literis
' prædictis noſtris plenius continetur: Tibi præci-
' pimus, quod literas noſtras in pleno Com' tuo
' legi, & perambulationem dictam ſecundum me-
' tas & bundas in eiſdem literis contentas publicè

' pro-

'proclamari, & firmiter obſervari faciatis: Salvis 'nobis quadraginta diebus à tempore dat. hujus 'brevis numerand', ad feras noſtras in locis extra 'foreſtam perambulat' præd ſic poſit' exiſtentes, 'ad foreſtam noſtram effugand'. Teſte meipſo 'apud Wigorn. 26 die Decembris Anno regni 'noſtri primo.

Per ipſum Regem & Conſ'.

89. And becauſe it was the King's Will that the Conſtable of *Windſor*-Caſtle ſhould go about the Boundaries of the ſaid Perambulation, and drive the Beaſts out of the ſame into the Foreſts within the ſaid forty Days, he, by another Writ, commanded him ſo to do, the tranſcript whereof is likewiſe as follows:

'90. Edwardus, Dei gratia Rex Angliæ, 'Dominus Hiberniæ, & Dux Aquitaniæ, Conſta-'bulario Caſtri noſtri de Windſor, vel ejus locum-'tenenti, Salutem: Cum nuper in parliamento 'noſtro apud Weſtm' convocato ad Supplicatio-'nem Prælatorum, Comitum, Baronum & com-'munitatis noſtri regni per literas noſtras patentes 'conceſſ. quod perambulationes tempore Domini 'Edwardi quondam Regis Angliæ, Avi noſtri, in 'Foreſtis ſuis tam citra Trentam quam ultra factæ, '& per ipſum Avum noſtrum conceſſæ, & con-'firmatæ ſecundum bundas in eiſdem perambula-'tionibus contentas obſerventur in perpetuum & 'teneantur, Et quod perambulationes in foreſtis, 'in quibus tempore dicti Avi noſtri factæ non fue-'runt, per fideles noſtros ad hoc aſſignatos fie-'rent, ſub ea celeritate qua fieri poſſent bono 'modo: Et quod nos perambulationes illas, cum 'factæ fuerint, & nobis retornatæ, ſub metis & 'bundis, quas in eiſdem inveniri contigerit, pro 'nobis & hæredibus noſtris confirmari & appro-

'bari

‘ bari faceremus, prout in literis noſtris plenius
‘ continetur; Ac poſtmodum ad requiſition. Com-
‘ munitatis Com' Surrey nobis ſuggerent', quod
‘ perambulationes in Foreſtis noſtris in eodem
‘ Com' factæ non fuerunt, Volentes conceſſionem
‘ noſtram præd' effectum mancipari, aſſignavimus
‘ dilectos & fideles noſtros Tho' Tregorr, Johan'
‘ de Stonore, Johan' de Iſeild, & Johan' Dabnon,
‘ perambulationem rectam in foreſtis noſtris in ad
‘ eodem Com' in quibus perambulationes tempore
‘ dicti Avi noſtri factæ non fuerunt, per ſacramen-
‘ tum tam militum quam aliorum proborum &
‘ legalium hominum de eodem Com', per quos
‘ rei veritas melius ſciri, & perambulationes illæ
‘ melius fieri poſſent, faciend', juxta tenorem
‘ chartæ Domini Henrici quondam Regis Angliæ,
‘ proavi noſtri, de Foreſta: Ac iidem Thomas,
‘ Johannes, Johan' & Johannes, perambulationem
‘ hujuſmodi in eodem Com', prætextu aſſign' no-
‘ ſtræ eis inde ſic factæ fecerunt, & eas nobis in
‘ Cancellariam noſtram miſerunt in forma ſub-
‘ ſcripta.

‘ Perambulatio Foreſtæ Comitatus Surrey juxta
‘ metas & bundas per inquiſitionem inde captam,
‘ coram Tho' Tregorr, Johan' de Iſeild, Johan'
‘ de Stonore, & Johan' de Dabnon, ad perambu-
‘ lationem illam faciend. aſſignat. Ac poſtea facta
‘ per viſum præd. Johannis, Johannis, & Johan',
‘ ac per ſacramentum H. Huſe, Henrici de
‘ Mounteforti, Militum, Rob. le Doll, Henrici de
‘ Somersbury, Willi. Huſe, Johannis de Bures, ſen.
‘ Mich. de Bachiler, Johannis de Prodehome,
‘ Willi' de Pokle, Johanni Stocket, Rob. de Dit-
‘ ton, & Johannis de Kingſwood, Jurat': Qui di-
‘ cunt, quod tempore dicti Avi noſtri nulla peram-
‘ bulatio facta fuit in Com' Surrey, ſed perambu-
‘ latio faciend' in foreſtis illis inchoanda eſt apud
‘ Waymouth, Et abinde ſemper in longitudine

' Tamisiæ usque Loderlakeshach, ubi tres Com' ' conveniunt, viz. Surrey, Berks, & Bucks, Et ' abinde usque Orientalem Corneram parci de ' Windsor, Et abinde ad molendinum de Harpes- ' ford, Et abinde usque Thornhull, Et abinde us- ' que Sideway, Et abinde usque le Lee, & sic usque ' Horton, Et abinde per medium la Shete usque ' Gomerishford, Et abinde usque Rolnescrouch, ' Et abinde usque Wishemoreseden, Et abinde usque ' Brudeford, ubi tres Com' conveniunt, viz. Sur- ' rey, Berks, & Southampton, Et quod totus ' Com Surrey est extra forestam, & fuit tempore ' dicti Regis Henrici proavi nostri.

' Ac nos perambulationes prædict' acceptantes, ' & eas pro nobis, & hæred' nostris, quantum in ' nobis est, ratificaverimus, approbaverimus, con- ' cesserimus, & confirmaverimus, secundum metas ' & bundas prædictas imperpetuum observand': ' salvo semper in omnibus jure nostro, prout in ' literis nostris præd. plenius continetur: Per quod ' præcepimus Vicecom. nostro com. præd', quod ' perambulat' prædict' secundum metas & bundas ' in eisdem literis nostris contentas faciat observari: ' Salvis nobis quadraginta diebus à tempore brevis ' nostri sibi inde directi numerand', ad feras nostras ' in locis extra forestam per perambulationes præ- ' dict' sic positis existentes, ad Forestam nostram ' effugand'. Vobis mandamus, quod feras nostras ' infra quadraginta dies à locis extra forestam sic ' positis, ad forestam cum omni celeritate, qua po- ' teritis, effugari faciatis, Et talem & tantam dili- ' gentiam in hac parte apponatis, quod dampnum ' nobis de feris nostris ibidem per vestram negli- ' gentiam nullatenus generet'. Teste meipso apud ' Wigorn, xxvi. die Decembris, Anno Regni no- ' stri primo.

Per ipsum Reg. & Conf'.

91. By

91. By vertue of which Writ, after the ſaid Charter was read and proclaimed in the County-Court, that the ſaid Perambulation ſhould be firmly kept, the Conſtable of *Windſor-Caſtle* drove the King's Beaſts out of the Perambulation into the Foreſt, within the forty Days limited for that purpoſe; during all which Time the Men of *Surrey* behaved themſelves in a peaceable manner, without committing any Treſpaſs; and after the ſaid forty Days were expired, they enjoyed the Franchiſes ſo granted and confirmed to them by the King as aforeſaid.

92. And thus ended the Proceſs of the Perambulation of the Foreſt of *Windſor*, in the County of *Surrey*, which was proſecuted in this manner till a Charter was made and confirmed by the King, according to that which he had before granted in Parliament to the Nobility and Commons of the Realm, to be kept and obſerved by himſelf and his Heirs for ever.

That the Purlieu, in ſome ſort, is Foreſt ſtill.

93. By theſe Precedents it appears, in what manner the new Afforeſtations were diſafforeſted by theſe *Perambulations*, and how they began: for all ſuch Woods and Lands which were afforeſted by King *Henry* 2. King *Richard* 1. or King *John*, and were afterwards diſafforeſted and ſevered by theſe Perambulations from the old Foreſts, they were and are ſtill called *Purlieus*, but very corruptly; for they are properly *Purlieus* which are Lands diſafforeſted by *Perambulations*.

94. But yet the ſame were not ſo abſolutely diſafforeſted to every Man; for by *Charta de foreſta*, *Artic.* 1. it was granted, That if the King had afforeſted any other Woods than his own, *ad dampnum illius cujus Boſcus ille fuerit, ſtatim deafforeſtetur*;

ſo that the *Purlieu* was diſafforeſted only *quoad illos*; and no other Man was to take the Benefit thereof, but thoſe who were the proper Owners of ſuch Woods or Lands: And notwithſtanding the diſafforeſting, they may ſuffer their Lands to continue as part of the Foreſt ſtill, if they intend to have Common there.

95. This appears by the Statute of 33 *Ed.* 1. *cap.* 5. So that the Diſafforeſtation was made only for the Owners of thoſe Lands, and for their Benefit, and not generally to give Liberty to any Man to hunt the Wild Beaſts and ſpoil the *Vert*.

96. For if theſe Beaſts ſhould eſcape out of the Foreſt into the *Purlieu*, the King hath a Property in them ſtill againſt every Man, but againſt the Owners of the Woods and Lands in which they are; and ſuch Owners have a ſpecial Property in them *ratione loci*, but yet ſo that they hunt them fairly with Dogs or Greyhounds, and not foreſtall them in their Return towards the Foreſt again.

97. And for this purpoſe the King hath Officers in the *Purlieu*, called *Rangers*, who are to look after the Beaſts of the Foreſt, and to drive them out of the *Purlieus* into the Foreſt; which ſhews, that though they are in the *Purlieus*, yet the King hath ſtill a Property in them, for otherwiſe the *Rangers* have no Authority to drive them out.

98. *Anno* 7. *H.* 6. Juſtice *Cockeine* was of Opinion, That if a *Hart* ſtray out of the Foreſt, the King's Foreſters may purſue and make Proclamation in the next Towns, that no Perſon ſhould hunt or kill it; which likewiſe proves, That though the Wild Beaſts are out of the Foreſt and in the *Purlieus*, yet the King hath ſtill a Property in them.

99. Therefore the *Purlieu*, as to ſome purpoſes, is Foreſt ſtill, *viz.* for the King's Wild Beaſts to have their free Recourſe therein, and ſafe Return

to

to the Foreſt, without any Hurt or Deſtruction, other than by the Owners of the Lands in the *Purlieu* where they ſhall be found, and that only to hunt and chaſe them back again towards the Foreſt, without any foreſtalling, as aforeſaid.

100. The Caſes 13 *H.* 7. *fo.* 10. *placito* 14. and *Paſch.* 7 *H.* 6. *fo.* 36. *placito* 41. and *Hill.* 13 *H.* 7. *fo.* 16. *placito* 14. prove, That though a Man may preſcribe to hunt Wild Beaſts in his *own Land*, yet a Preſcription is not good to hunt the *King's Wild Beaſts*, though they are in his *own Land*, *viz.* thoſe which eſcape out of the Foreſt into the *Purlieus*.

How and for whom the Purlieu is free to hunt in.

101. But though the *Purlieu* be Foreſt ſtill to thoſe who have neither Woods nor Lands of Freehold therein of the yearly Value of 40 *s.* yet thoſe who have Lands there of that Value, might keep *Greyhounds* there by the Statute of 13 *R.* 1. *cap.* 13. 4 *Co.* 303, 304. 43 *Ed.* 3. *fo.* 8.

102. But this Qualification is now altered by ſubſequent Statutes (which may be ſeen in Title *Dogs*;) and thoſe who are now qualified to keep Dogs by theſe Statutes, and who have Woods or Lands in the Purlieus, finding any Wild Beaſts there, may *hunt* them towards the Foreſts, becauſe they have a Property in them, as aforeſaid, *ratione ſoli*, and if they begin the Courſe in their own Lands, they may follow the Chaſe through any Man's Grounds whatſoever.

13. But if the Beaſt return towards the Foreſt, they muſt not foreſtal him with Dogs or any manner of Engine whatſoever; for that is prohibited by *the Aſſiſes of Woodſtock*, *Anno* 30. *H.* 2. *Artic.* 13. upon pain of a Year's Impriſonment, and the Offender to be fined at the King's Pleaſure.

104. So that the *Purlieu*, to ſome purpoſes, is free to ſome Men to *hunt* there: But it was the Opinion of *Noy*, Attorney-General, That ſuch *hunting* is only by Toleration, without any manner of Right; for a Man cannot preſcribe to hunt in a *Purlieu*, becauſe a *Purlieu* itſelf began within time of Memory; and there is no Statute which gives a Purlieu-Man any ſuch Authority, for he is only to keep the Deer out, but cannot kill them though they are in his own Grounds. *Jones's Rep.* 275.

15. But 'tis plain, there muſt be no foreſtalling; for, by the aforeſaid *Aſſiſes*, *Anno* 20 *H.* 3. 'tis ordained, *viz. Item Rex præcipit, quòd nullus de cætero chaceat ullo modo ad capiendum feras per noctem infra foreſtam, neque extra, ubicunque feræ frequentant, vel pacem habent aut habere conſueverunt, ſub pœnâ impriſonament' unius Anni, & faciendo finem & redemptionem ad voluntatem ſuam, & quòd nullus ſub eadem pœnâ faciat aliquam forſtallationem feris ſuis vivam vel mortuam inter foreſtam ſuam & boſcos vel alia loca per ipſum vel progenitores ſuos deafforeſtat'.*

106. By this it appears, that all manner of *foreſtalling*, either with Dogs or any Engine whatſoever, is utterly forbidden in the *Purlieus*, and the Puniſhment is particularly declared againſt thoſe who offend therein; and though a *Purlieu*-Man hath a Property in the Beaſts, *ratione ſoli*, againſt every Man but the King, yet 'tis but a Conditional Property; that is, if he kill the Beaſt without foreſtalling, and in hunting it fairly with his Dogs, in ſuch Caſe 'tis his own; but if the Beaſt once recover the Foreſt, though it be only *filum foreſtæ*, *viz.* the Liſt or Brink of the Foreſt, before the Dogs faſten, then 'tis abſolutely the King's or the Owner's of the Foreſt.

107. And yet in ſome caſe a Purlieu-Man may enter the Foreſt; *viz.* If the Dog faſtens on the Deer before he recovers the Boundaries thereof, and

and by the Force and Strength of the Beaſt is drawn into the Foreſt; and the Beaſt kill'd there: In ſuch caſe the *Purlieu*-Man may enter by reaſon of the *firſt Property* which he had *ratione ſoli*, and by the Purſuit and Poſſeſſion which he had by the faſtening of his Dog, and may take and carry the Deer away.

108. But 'tis to be obſerved, That a Purlieu-Man muſt hunt his own *Purlieu* himſelf, and with no other Company than his own ſervants, and not otherwiſe; for he cannot licence any other Perſon or Perſons to hunt there, becauſe the Authority which he hath himſelf, is only conditional; 'tis a Licence of Profit which is ſtrict and cannot be deputed to another.

109. This appears in *Aſhton's Caſe*, *Mich.* 18 *Ed.* 4. *fo.* 14. *viz.* If a Man hath a Licence to kill a Buck in a certain Place, and to diſpoſe of it at his Pleaſure, his Servant cannot juſtify the doing it by his Command, becauſe the Licence goeth ſtrictly to him to whom it was given, and no other.

110. Neither may a *Purlieu*-Man hunt or kill a Deer out of Seaſon, though 'tis found in his own *Purlieu*, becauſe that would be a double Treſpaſs to the Foreſt, *viz.* to kill a Deer good for nothing, and when 'tis not able to run.

111. And if he doth hunt in his own *Purlieu*, and his Dogs purſue the Chaſe towards the Foreſt, he muſt recal them before they enter therein, for otherwiſe he will be a Treſpaſſer, if the Deer is killed in the Foreſt.

112. This appears in 43 *Ed.* 3. *fo.* 8. *placito* 23, *viz.* If a Hunter call back his Dogs before they enter the Foreſt, in ſuch Caſe, if they enter and kill the Beaſt there, the Owner of the Dogs ſhall not be a Treſpaſſer, if he do not enter the Foreſt himſelf, nor meddle with the Beaſt ſo killed.

113. Therefore, that a Purlieu-Man may the better remember in what Manner he may hunt in his Purlieu, he muſt obſerve,

1. That he begin the Chaſe in his own *Purlieu.*
2. That he do not foreſtall, *&c.*
3. That before his Dogs enter the Foreſt, he call them back.
4. That he do not follow his Dogs into the Foreſt, except they faſten on the Deer firſt, and are then drawn into the Foreſt, and the Deer killed there.
5. That he do not hunt with any more in Company, than with his own Servants.
6. That he do not kill a Deer out of Seaſon.

When and how often a Purlieu-Man may hunt, &c.

114. But a Purlieu-Man muſt not hunt at all times and ſeaſons, nor in what manner he will; for then the Purlieus would ſoon deſtroy the Foreſts; for which Reaſon the antient Uſage and Policy of the Foreſt-Laws have always prohibited theſe Men to hunt contrary to any of the following Rules.

115. §. 1. A Purlieu-Man muſt not hunt in his own Purlieu in the *Night-time*; this is prohibited by the 13th Article of *Aſſiſa de Woodſtock*; that is, He muſt not hunt there after the ſetting of the Sun, nor until the riſing of the ſame; and the Reaſon is, becauſe the King's Wild Beaſts may not be diſturbed in their feeding in the Foreſt; for 'tis impoſſible for any Man to hunt in the Purlieus in the Night-time, without it be *ad Terrorem ferarum quæ ſunt infra foreſtam*; for though the Dogs may not follow the Beaſts out of the *Purlieus* into the

the Foreſt, yet the Noiſe and Fright of the Deer which are driven into the Foreſt, will diſturb the Quiet of thoſe which are there, it being the Nature of thoſe Beaſts to feed in the Night-time, and to reſt in the Coverts all Day; and therefore the hunting them at that Time is prohibited.

2. He muſt not hunt on the *Sunday*, for that is a Day appointed for the Reſt both of Man and Beaſt, and for the Service of God, and not for Sports; 'tis a Day in which all profitable Buſineſs is forbidden by the Statute of 1 *Eliz.* though it tends to the publick Good, and much more *hunting*; and for that Cauſe 'tis not accounted *Dies juridicus*, that is, a Day in any Court at *Weſtminſter*, or elſewhere. See *Dyer*, *fo.* 168. *placito* 17.

3. He muſt not hunt in the *Fence-Month*, becauſe of diſquieting the Deer which are then ready to *fawn*, or for fear of killing the young *fawns* which are not able to run.

4. He muſt not hunt oftner than *three Days in a Week*, leſt, by often hunting, he diſquiet the Beaſts in the Foreſt, or fright them from their Paſture or Places where they uſually frequent; for the Laws of the Foreſt prohibit all things which are *Ad terrorem ferarum Foreſtæ Domini Regis*; and therefore a Man may not build a new Mill in the Foreſt without Leave.

5. He muſt not hunt in the Purlieu with any other Company but his *own Servants*, becauſe his Intereſt in hunting is only a Conditional Licence of Profit, which goes ſtrictly to him to whom 'tis given, and not to any other; and 'tis likewiſe clear in Law, That he who hath a Licence or an Intereſt of *Profit*, may juſtify for *himſelf and his Servants*; but he who hath

a Licensee or Interest for *Pleasure*, cannot justify for his Servants, though he may for himself; but he who may justify for his Servants, cannot justify for any other Person. *Hill.* 13 *H.* 7. *fo.* 13. *placito* 2. Besides, the Laws of the Forest do not allow a multitude of People to assemble themselves together to hunt in the Purlieus, because that is likewise *Ad terrorem* of the Beasts in the Forest.

6. He must not hunt within *forty Days* next after the King's hunting in the Forest, because the Beasts frighted out of the Forest, may have Liberty in that Time to return; for they did not come into the Purlieus of their own accord, but were frighted, and took Shelter there: And the Laws of the Forest intend, That if they are not disturbed, they will return within that time, or that the Rangers will drive them back; and 'tis for this Reason that, in every Grant of a Purlieu of such Lands which were disafforested, there is always an Exception of forty Days reserved for the Return or driving back the Deer to the Forest, as may be seen before in the Precedent of *Windsor* Forest.

7. As he may not hunt forty Days *after*, so he must not hunt in the Purlieus forty Days *before* the King's hunting in the Forest, because, during that Time, the Beasts are not to be disquieted, that the King may have a full View of them.

8. He must not (after Notice given) hunt in the Purlieus when any Forester is serving a Warrant in the Forest, to hinder him from such Service.

9. He must not hunt with any manner of forestalling; neither shall he make any Salteries

or

or Leaping Places where the Deer may leap into the Purlieu, and cannot return.

10. He may not hunt a Deer out of Season, though 'tis found in his own Purlieu, becauſe they are not able then to run, and are worth nothing when caught; and therefore he muſt not hunt a Deer of *Antler* in the Winter, nor *Does* in the Summer.

116. All theſe Things have been taken for Law ever ſince Purlieus were firſt made, and have been uſed and executed for Law by all the Juſtices in Eyre, and Learned Men and Judges, that have given any Charges in their *Iters* of the Foreſt, as it appears in all the Charges of the ſaid Juſtices ever ſince the Time of *William* Lord *Veſey*.

117. The Offenders likewiſe, and thoſe who were Treſpaſſers in hunting in the Purlieus contrary to any of thoſe Ordinances, have been puniſhed for the ſame; as it appears by *the Aſſiſes and Iters of the Foreſt of Waltham*, in the Reign of *Ed.* 2. and *Ed.* 3. which are now to be ſeen in Mr. *Anger's* Office in the *Exchequer*; and if there had been no ſuch Ordinances, the Foreſts would not have continued ſo long as they have done.

118. Upon the whole Matter, a Purlieu-Man muſt *utere ſuo ut alienum non lædat*; he may hunt in the Purlieu, ſo that he doth not diſturb the Deer in the Foreſt.

119. 'Tis a ſorrowful thing to ſee ſo many ſtately Foreſts which were formerly accounted Ornaments of the kingdom, to be now deſtroyed, partly becauſe the true Meets and Boundaries of them are not known, by reaſon whereof, that which was really Foreſt is now Purlieu; and partly becauſe the Abuſes done therein are ſuffered to continue without any Puniſhment; for they now hunt in the Purlieus as they pleaſe, and purſue their

their Chaſe into the very Foreſts, and kill and carry away any Deer there; by which Means they have almoſt deſtroyed *Waltham*-Foreſt.

How and where Offences, done in a Purlieu, are to be puniſhed.

120. The Offences committed in the Purlieus, contrary to the Laws and Ordinances aforeſaid, are accounted Offences of the Foreſt, becauſe they are Injuries and Wrongs done to the Wild Beaſts there; and ſuch Offences are to be preſented by the *Rangers* at the next Court of Attachments to be holden for the Foreſt adjoining to the Purlieu, or elſe at the next Court of *Swanimote* or *Juſtice-Seat*, which ſhall firſt happen to be kept for the ſaid Foreſt, to the end that all ſuch Treſpaſſers and Offenders in the Purlieu may be puniſhed according to the Quality of their Offences, after a lawful Trial at the Court of *Swanimote* before the *Foreſters*, *Verderers*, *Regarders*, *Agiſtors* and other Miniſters of the Foreſt, in ſuch ſort as by the Laws and Ordinances thereof is ordained and appointed.

121. After ſuch Tryal had and Conviction of the Offenders and Treſpaſſers in the Purlieus, they are to be bound with good Sureties to the Good Behaviour of the Foreſt, until the next Juſtice-Seat which ſhall be holden for the ſaid Foreſt; and then they are to appear there, and to be puniſhed according to the Direction of the Lord Chief Juſtice in Eyre, either by Impriſonment, Fine or Ranſom.

The Difference between a Foreſt, a Purlieu, and Land which never was Foreſt.

121. All the Woods and Lands which are within the Regard of the Foreſt, are ſubject to the Charge and

and Laws thereof, as well in reſpect of the Owners of the Woods and Lands which are therein, as of any other Perſon whatſoever; for they may not fell their Woods within the Regard, without the King's Leave, nor improve their Lands, nor hurt or chaſe the Wild Beaſts there, without ſome Warrant or Authority from the King.

122. Thoſe who have Woods or Lands within the *Purlieus*, are without the *Regards* of the Foreſt, and are therefore abſolutely free from the Charge or Laws thereof in reſpect of *felling their Woods*, or converting their Lands into Tillage, or otherwiſe improving the ſame to their beſt Advantage or Profit; but yet thoſe Lands are not abſolutely free to them from all manner of Charge of the Foreſt, becauſe the Wild Beaſts may have recourſe therein, when they eſcape out of the Foreſt, and are not to be diſturbed by any Man but the Owner of the Lands where they are.

123. But that which was never Foreſt or Purlieu, and by conſequence never diſafforeſted, is abſolutely free, and there the King's Wild Beaſts have no manner of Privilege, neither are there any *Rangers* or other Officers appointed to hunt or drive them back to the Foreſt out of ſuch Grounds; ſo that if they are not very near the Boundaries of the Foreſt, any Man who is qualify'd to keep *Greyhounds* or *Dogs*, may hunt and chaſe them, ſo that he doth not foreſtal them in returning to the Foreſt.

124. *In Itinere Windſor*, *Jones's Rep* 275. Mr. Attorney *Noy* argu'd, That Purlieu-Men might keep out the Deer, but could not kill them though they were in their own Grounds, and that their hunting there is only by Toleration; they cannot preſcribe to hunt, becauſe no Purlieu is by Preſcription; and by the Statute-Law they have no ſuch Authority. *Jones's Rep.* 275.

Purpreſture.

See { *Nuſances*, 9, 20.
Appendix, Ch. Foreſtæ, 4, 12.
Appendix, Aſſiſæ Foreſtæ, 4.

1. THE Word *Purpreſture* is taken for any thing which a Man hath wrongfully incroached on another, and by Incloſure or Uſage hath appropriated to himſelf.

2. 'Tis called by Mr. *Glanvill*, *Lib.* 9. *cap.* 11. *fo.* 71. *Purpreſtura*, which is a Word of Art, for 'tis not *Latin*, but derived from the *French* Word *Pourpris*, which ſignifies, to take from another, and to incloſe for himſelf; and that which the *French* call *Pourpris*, the *Latiniſts* call *Conſeptum*, which ſignifies an *Incloſure*.

3. This is a Treſpaſs ſo very injurious to the *Vert and Veniſon* in the Foreſt, that if there were not ſevere Laws to prohibit it, and likewiſe to puniſh the Offenders, all Foreſts would, in a little time, be deſtroyed; for as a *Waſte* therein is one Means to decay it, *viz.* by cutting down the Woods and Coverts, and an *Aſſart* by utterly deſtroying them and converting the Land where they grew to Tillage; ſo *Purpreſture* is likewiſe another effectual Means to deſtroy it, by building and new erecting Houſes and other Incloſures therein.

4. For if every Owner of Lands in the Foreſt might build as many Houſes there as he pleaſed, it would in a ſhort time, be ſo full of People and Houſes, that the Wild Beaſts would be frighted out of the Foreſt; and therefore, at firſt, Foreſts were made where they were few or no Inhabitants, and afterwards, by the ſpecial Licence and Favour

of

of the King, ſome few People were ſuffered to dwell there; and ſo, in proceſs of Time, the Inhabitants increaſed, but ſtill they were to have Leave from the King to dwell there.

5. When ſome Foreſts were made, the Kings who made them, pulled down, not only Houſes, but Churches in thoſe Places, that the Wild Beaſts might reſt there undiſturbed: And if this could be lawfully done, then, by the ſame Law, they might forbid all thoſe who are Owners of Lands in the antient Foreſts to build any Houſes there without the Leave of the King, or his Chief Juſtice in Eyre, becauſe new Erections, and increaſing dwelling-Houſes in the Foreſts are,

1. *Ad terrorem ferarum*, for the ſight of many Houſes would terrifie the Deer.
2. *Ad nocumentum Foreſtæ*, becauſe the People and the Inhabitants would deſtroy the *Vert*.
3. *Ad ſuperoneratiouem Foreſtæ*, for by the encreaſe of Houſes and Inhabitants, the Foreſt of Neceſſity would be ſurcharged.
4. *Ad exilationem ferarum*, becauſe the multitude of People and their Dogs would drive the Deer out of the Foreſt.

6. Therefore nothing can be more hurtful to a Foreſt than *Purpreſtures*, and the conniving at one cauſes many more; ſo that where *Foreſts* are well governed, there muſt be ſpecial Care taken to ſuppreſs all manner of *Purpreſtures*, for if they are tolerated, the Foreſts in a ſhort Time would be deſtroyed.

What is a Purpreſture in the Foreſt.

7. A *Purpreſture* in the King's Foreſt is any *Building*, or *Incloſure*, or uſing any *Liberty* or *Privilege* there without Warrant ſo to do.

8. *In Libro rubro Scaccarii, titulo accidentibus*, there is this Clauſe, *viz. Quod purpreſtura fit interdum per negligentiam Vicecomitis, vel miniſtrorum Regis, vel per continuationem in longa tempora, vel bellicam tempeſtatem, ut qui habitant prope fundum Coronæ, vel adjacent, aliquam eorundem portionem ſibi uſurpent, & ſuis portionibus aſcribant: Cum autem per luſtrantes Judices per ſacramentum legitimorum virorum compertum fuerit, appretiantur, & Vicecomiti traduntur, unde ſeorſim reſpondeat, & hanc dicimus purpreſturam, vel occupationem injuſtam.*

9. (Now, tho' this Clauſe ſeems rather to prove what is *Purpreſture* at Common Law, than by the *Foreſt-Law*; yet it ſeems plain, that to make any Encroachment on the King without Warrant or good Will, is a *Purpreſture* at Common Law, and ſo 'tis likewiſe by the *Foreſt-Law*.)

10. And Mr. *Hesket*, *fo.* 10. tells us, That if a Man incroach unto himſelf any Thing to which he hath no Right, that is a *Purpreſture*.

11. But this ſeems to be a little too general, for the Meaning muſt be, If he take *any Thing* (that is) any *Land*, *Liberty*, or *Juriſdiction*, by Incroachment from another, and poſſeſſeth it as his own, and that wrongfully; this is a *Purpreſture*.

12. With this agreeth Mr. *Glanvil*, who was a Judge here in the Reign of *H.* 2. in his Book of *The Laws and Cuſtoms of* England, *viz. Lib.* 9. *cap.* 11. *fo.* 71.

13. *Dicitur autem purpreſtura vel porpreſtura propriè, quando aliquid ſuper Dominum Regem injuſtè occupatur, ut in Dominicis Regis, vel in viis publicis obſtructis,*

vel in aquis publicis transverſis à rectâ curſu, vel quando aliquis in Civitate ſuper Regiam plateam aliquid ædificando occupaverit: Et generaliter, quoties aliquid fit ad nocumentum Regii tenementi, vel Regiæ viæ, vel Civitatis, placitum inde ad Coronam Domini Regis pertinet.

14. In the *Aſſiſes of Lancaſter, Anno* 12 *Ed.* 3. *fo.* 6. it was adjudged in the general Eyre of that Foreſt, That no Man may incloſe any Ground in the Foreſt *ad nocumentum ferarum*, and that ſuch an Incloſure is a *Purpreſture*; and tho' he hath a Licence to incloſe, it muſt not be done, *cum alta haya & foſſato, nec cum alto palatio*: For if he doth, 'tis *contra aſſiſam Foreſtæ.*

15. It was there likewiſe adjudged, That if a Man *build* a Houſe in a Foreſt without Licence, tho' 'tis on his own free Land, 'tis a *Purpreſture*: And the Judgment is, *Quod ipſe in miſericordia, & quod clauſum prædictum proſternetur.* And if the Land, on which ſuch *Purpreſture* is made, is granted to another, both the Grantor and Grantee ſhall be amerced.

16. So by the Claim of the Abbot of *Merival, Anno* 12 *Ed.* 3. *in the Aſſiſes of Pickering and Lancaſter*, it appeareth, That no Man may *build* any Houſes or low Houſes within the Regard of the Foreſt: And ſo it was alſo there adjudged in the Caſe of the Prior of *Lancaſter, Anno* 12 *Edw.* 3. *fo.* 9.

17. Now the Abbot claimed, by a *Grant* from the King, that he might make *omnimodum commodum ſuum in Foreſta, ſine aſſartando, & ſine ædificando, modis omnibus*: By which *Grant* it appears, That it was excepted to *Aſſart* or *build* Houſes there; therefore he might do neither.

18. *Anno* 17 *Eliz. Dyer fo.* 340. *plac.* 45. it was reſolved by the Majority of all the Judges of *England*, and by the Queen's Council at *Serjeants-Inn*,

in the preſence of the Earl of *Suſſex*, then Lord Chief Juſtice in Eyre of all her Foreſts on this Side *Trent*, That the building any Houſe within the ſeveral Soil or Waſte of any Man in the Foreſt was a *Purpreſture*, and an Annoyance to the Foreſt and Game; and the Perſon was either to be fined or to pay a certain Rent, if the ſame was ſuffered to be continued: But it was at the Judgment and Diſcretion of the Chief Juſtice in Eyre, either to fine the Perſon or to pull down the Building.

19. The aforeſaid Chief Juſtice in Eyre was *Learned* in the Laws himſelf, and yet he called to his *Aſſiſtance* the Judges and the Queen's Council, who aſſembled at *Serjeants-Inn* in *Fleetſtreet*, and gave their Opinions as aforeſaid; and my Lord *Dyer* was then Chief Juſtice of the Common Pleas, who reported this Caſe, ſo that 'tis Law, being ſo ſolemnly reſolved.

20. *Anno* 2 *Car.* 1. *Chriſtian Smith* and others being preſented for *building Cottages* upon the Waſte of the Manor of *John Gale* in *Windſor Foreſt*; it was agreed, That if a Lord of a Manor will ſuffer poor Men to build *Cottages* upon his Waſte, tho' he take no Rent for them, yet they ſhall be fined, and the Lord of the Manor ſhall pay the *Fines*: And if the Manor deſcends or is conveyed to another after the building ſuch *Cottages*, and the Perſon hath received any ſmall Rent for the continuance of thoſe *Cottages*, he ſhall pay the *Fines* becauſe he upholds them.

21. But in this Caſe, the *Cottages* being built before *Gale* purchaſed the Manor, and he having never received any Rent; it was ordered, That the poor Men who dwelt in them ſhould continue there during their Lives, and afterwards to be pulled down. *Jones* Rep. 172.

22. In the ſame Year one *William Matthews* was preſented for *continuing* a *Cottage* built on the King's Waſte in the ſaid Foreſt of *Windſor*; and he producing a Licence from the Earl of *Nottingham*, late Chief Juſtice in Eyre to incloſe and build there, *Noy*, *the Attorney General*, ſaid, That the Licence might excuſe the firſt Treſpaſs in *Building*; but that the Chief Juſtice might now reſeiſe it, and let it to any other who will give more Rent, and he was fined 5 *s.* and a higher Rent ſet. *Jones Rep.* 276,

23. In the ſame *Iter* Sir *Sampſon Darrel* was fined 5 *l* for *building* a *Windmill* in the Foreſt on his own Ground. *Jones's Rep.* 293.

24. And at the ſame Time one *Thomas Brown* was preſented for *building* a *Brickwall*, and thereby ſtraitening the Highway in the Foreſt. In this Caſe Mr. Attorney *Noy* ſaid, That the Court could not ſet a Rent to be paid for it, unleſs there had been an *Inquiſition*, *per miniſtros Foreſtæ, ſi ſit compertum paſſagium*: For if it be not, then 'tis a *Nuſance*, in which the Subject is ſo far intereſted, that the King cannot diſpenſe with it. *Jones's Rep.* 277.

25. At the ſame *Iter Mr. Attorney* ſaid, That if the Lord Chief Juſtice in Eyre will grant a Licence to *erect* a Cottage in the Foreſt, or to make any Incloſure, and reſerve a Rent for it for ever, it muſt be done *ſedente Curia*, otherwiſe it may be pulled down: But if it is granted in Court, and the Rent ſet, then 'tis good for ever. *Jones's Rep.* 277.

How many ſorts of Purpreſtures there are.

26. There are Four ſorts of *Purpreſtures*.

Purpreſtures
1. Againſt the King.
2. Againſt the King and the Publick.
3. Againſt the King and a common Perſon.
4. Againſt a common Perſon only.

27. (1.) *Purpreſture againſt the King*, is where a Man doth new *erect* or *build* any Dwelling-Houſe, or other Houſe in the Foreſt without Licence, and in a Place where there never was any Houſe before, tho' the ſame is in his own Ground; this is a *Purpreſture* againſt the *King*, and not againſt any other Man, becauſe 'tis no Incroachment upon any Body but only upon the King's Foreſt.

28. (2.) *Purpreſture againſt the King and Publick*, is where a Man *builds* a new Houſe or Mill on the *King*'s Highway or Waſte in a Foreſt; or if he *build* it in his own Land, if 'tis an hindrance of the Common Paſſage of the People.

29. (3.) *Purpreſture againſt the King and a Common Perſon*, is where a Man hath Land incloſed, lying in a Foreſt, and adjoining to the Waſte of a Lord of a Manor, and the Owner incroacheth on that Waſte, by removing a Hedge and taking in part of it, and ſo wrongfully enlarging his own Ground: For 'tis a *Purpreſture* againſt the King to incloſe Land in the Foreſt which never was incloſed before; and 'tis a *Purpreſture* againſt the Lord of the Manor wrongfully to incloſe any Part of his Waſte Ground.

30. (4.) *Purpreſture againſt a Common Perſon alone*, is where a Man hath an ancient Dwelling-Houſe, or other Houſe in the Foreſt, and by enlarging it he incroacheth upon the Lands of his Neighbour: In this Caſe he alone hath the Injury done to him; for it being an ancient Houſe, it might ſtand

in the Foreſt, and the *King* hath no wrong by this *Incroachment.*

31. So that where a Man doth wrongfully incroach any Thing to himſelf in a Foreſt, either upon the *King* or upon any other Perſon, or doth take upon himſelf any *Juriſdiction* or *Franchiſe* there, without any lawful *Warrant*; theſe are *Purpreſtures*: As for Inſtance,

32. If a Man keeps a *Fair or Market* there, without Preſcription or a lawful Grant from the King; or if he incloſe any of the King's Waſte Soil, or build any *Hogſty* or *Hovel* on ſuch Waſte, or on the Waſte of any other Man in the Foreſt, theſe are *Purpreſtures.*

The Forfeiture and Puniſhment of thoſe who commit Purpreſtures on the King's Lands.

33. The Puniſhment in this Caſe is to be committed without *Bail* until he hath paid a Fine to the King, which Fine is not certain but Arbitrary, at the Will of the Chief Juſtice.

34. This appears *in Aſſiſa Foreſtæ, Anno 6 Ed.* 1. and by *Glanvil, Lib. cap.* 11. *fo.* 72. *viz. Et qui per Juratam ipſam, aliquam hujuſmodi feciſſe Purpreſturam convictus fuerit, in miſericordia Domini Regis remaneat de toto feodo quod de eo tenet, & quod occupavit reddat.*

35. The Law intendeth a very grievous Fine ſhould be ſet on him who makes a *Purpreſture* on the *King's Lands*, for 'tis an Aggravation of the Offence, and therefore the Fine ſhould be proportioned to the Crime; and the Place on which the *Purpreſture* was made, is to be ſurrendered to the King to whom it doth rightfully belong.

The Puniſhment of him who commits a Purpreſture in his own Land.

36. The Puniſhment in this Caſe is, That the Offender be committed until he is delivered by *five Pledges*: This is for the *firſt Offence*, by the Aſſiſes of the Foreſt aforeſaid.

37. For the *ſecond Offence*, he ſhall be committed until he is delivered by *twelve Pledges*.

38. And for the *third Offence*, he ſhall be committed until he pay a Fine to the King; and in this Caſe the Offender is not *bailable* by Law, but only *ex gratia* of the Lord Chief Juſtice in Eyre, who is obliged by no certain Rules, but may ſet an Arbitrary *Fine*, according to the quality and quantity of the Offence.

39. And 'tis to be obſerved, That the Judgment is Twofold, even for every *Purpreſture* which a Man makes on his own Lands in the Foreſt, *viz. to pay a Fine* to the King, and that the *Houſe be pulled down*, or to pay a *Rent*, if continued; but this is at the Diſcretion of the Chief Juſtice in Eyre.

40. And becauſe every *Purpreſture* in the Foreſt is *finable at Diſcretion*, according to the quantity and quality of the Offence; therefore 'tis neceſſary, that in all Indictments or Preſentments for the ſame, there be a ſufficient certainty in theſe Particulars following.

1. Who made the Purpreſture, in what manner and when the ſame was done.
2. Where the Ground lies in which it was made, and in whoſe Tenure it is, and what quantity the ſame doth contain, and what it was worth by the Year.
3. Whether the Purpreſture was made on the Soil and Inheritance of the King or of a common Perſon.

4. In

4. In whoſe Fee the ſame is, in what Pariſh, and who hath the Inheritance.

The difference between Purpreſtures and Aſſarts.

41. There have been ſome Opinions, that *Purpreſture* is properly on the Lands *of the King*, but *Aſſarts* may be made on the Lands of *any Perſon*: And this was the Opinion of Mr. *Treherne* and Mr. *Archer* in their Readings on the Foreſt-Laws.

42. But this ſeems to be a Miſtake, not only upon the Authorities before mentioned, but by the Words and Meaning of *Charta de Foreſta*, *Artic.* 4. by which 'tis enacted, That all Men who have *Woods* in the Foreſt ſhall enjoy them in ſuch manner as they did at the Coronation of *H.* 2. And 'tis further enacted, That they ſhall be pardoned for all *Purpreſtures*, *viz.* *Quod habeant boſcos ſuos, & quod quieti ſint imperpetuum de omnibus purpreſturis vaſtis & Aſſartis*, which ſhews that *Purpreſtures* may be made on their own Lands as well as *Aſſarts* and *Waſtes*.

43. So likewiſe in the *Aſſiſes of the Foreſt*, *Artic.* 4. and in *Raſtal. Abr.* 21. *Si quis inventus fuerit in Dominico Regis aſſartando vel purpreſturam faciendo, corpus debet protinus retineri; ſin autem extra Dominicum infra Regardum, debet poni per ſex plegios & ſi alias inveniatur debet duplicare eiſdem plegios, &c.*

44. Here the Law is clear, *viz.* That *Purpreſtures* and *Aſſarts* may be committed in the *King's Lands*, for which Offence there is a particular Puniſhment appointed, different from the Puniſhment which is to be inflicted on thoſe who make *Aſſarts* and *Purpreſtures* on the Lands of other Men: So that the difference of the Puniſhment plainly ſhews that *Aſſarts* and *Purpreſtures* may be made on other Mens Lands, and not only on the King's.

45. But the true difference between *Aſſarts*, and *Purpreſtures* is, That *Aſſart* is the converting any Coverts in the Foreſt into Arable; but *Purpreſture* is a wrongful incroaching of a new Thing either upon the King or a Common Perſon.

46. Upon the whole Matter, 'tis a *Purpreſture* for a Man to build any Houſe in the Foreſt, altho' on his own Land: And upon the Conviction of the Offender, the Judgment is, *Ideo ipſe in miſericordia & clauſus prædictus proſternetur*; *Aſſiſa Lancaſt. fa.* 6.

47. And if he who maketh a Purpreſture, grants over his Lands where the Purpreſture was made, both he and the Grantee ſhall be fined. *Fol.* 6.

48. They are likewiſe bound to *pull down the Buildings*, at or before a certain Day for that purpoſe appointed, or otherwiſe to pay a yearly *Rent* to the King for the continuance of them: But I do not find that any Man hath been bound to the Good Behaviour in the Foreſt for making any *Purpreſture* there.

49. In *Windleſham* in the Foreſt of *Windſor* there were ſeveral Cottages and Incloſures made in the King's Soil: And afterwards the King ſold the Manor; and the Queſtion was, Whether this had diſpenced with the *Purpreſtures*? And Mr. Atorney *Noy* argued, That it had not, but that the Grantee muſt be now fined for the *continuance* of them, and that they muſt be pulled down if he would not agree to pay a new *Rent* for them; for otherwiſe the King's Grant would be taken by implication to continue a Wrong in the Foreſt, which he never intended; And therefore the Lord of the Manor was fined, and a new Rent ſet on the Houſes. *Jones's Rep.* 277.

Ranger.

See *Purlieu*, 97, 120.

BEcauſe the *Purlieus* were once Foreſt, and great ſtore of Deer and other wild Beaſts continued there after they were diſafforeſted; therefore it was very neceſſary for the King to have ſome particular Officers there, to have a care to preſerve the wild Beaſts therein, for otherwiſe the Foreſts might be deſtroyed by the *Purlieus*.

2. Therefore immediately after the diſafforeſtation by the Perambulations, there were certain Officers appointed for that Purpoſe called *Rangers*, who are no Officers of the Foreſt, as *Regarders* are, to take charge of the *Vert*; but they are Officers of or to the Foreſt, tho' not *within* the Foreſt, and they have no Charge of the *Vert*, but only of the *Veniſon* which cometh out of the Foreſt into the *Purlieus*, and which they are to drive back again without deſtroying the ſame.

3. There are ſome of the King's Foreſts which were never enlarged by any new Afforeſtations, and by conſequence ſuch Foreſts have no *Purlieus*, and therefore there are no *Rangers* there.

4. And in ſuch Caſe the *Foreſters* may purſue and follow the Deer which get out of the Foreſts and drive them back, which they cannot do where there are *Purlieus* and *Rangers*, unleſs they follow them with freſh purſuit within their View. *Paſch.* 7 *H.* 6. *fo.* 36. *Placito* 41. *Hill.* 13 *H.* 7. *fo.* 16. *Placito* 14.

By

By whom made, his Office, Oath and Authority.

5. A *Ranger* is made by the King's Letters Patent, who alloweth to every one of them a yearly Fee or Penſion of 20 or 30 *l.* payable out of the *Exchequer*, and a Fee-Deer, both red and fallow, out of the Foreſt.

6. His Office conſiſts in ranging and walking about the *Purlieus*, to drive the wild Beaſts ſafely into the Foreſts; and in preſenting all Offenders and unlawful Hunters, and what Treſpaſſes they have done in the *Purlieus*, and in their Walks; So that his Office and Authority conſiſts in three Things.

7. (1.) *Ad ambulandum quotidie per terras deafforeſtatas, ad videnda. audiend. & inquirend. tam de malefactis, quam de malefactoribus in Balliva ſua.*

8. (2.) *Ad refugand' feras Foreſtæ, tam veneris quam chaſiæ, de terris deafforeſtatis in terras afforeſtatas.*

9. (3.) *Ad præſentandum omnes tranſgreſſiones Foreſtæ in terris deafforeſtatis factas, ad proximas curias illius Foreſtæ tentas.*

10. And to the Intent that every *Ranger* ſhould be the more careful to execute his Office according to the Laws, he muſt be ſworn. The Form of his Oath is;

The OATH.

YOU *ſhall truly execute the Office of a Ranger in the Purlieus of* Windſor *upon the Borders of the King's Foreſt of* Windſor. *You ſhall rechaſe, and with your*

your Hounds drive back again the Wild Beasts of the Forest, as often as they shall range out of the same Forest into your Purlieus. You shall truly present all unlawful Hunting and Hunters of wild Beasts of Venery and Chase, as well within the Pourallees as within the Forest, and those and all other Offences you shall present at the next Court of Attachments or Swanimote, which shall first happen. So help you God, &c.

11. In this Oath is contained the whole Office of a *Ranger*; and he is so called, because they range or walk thro' the Forest: In *Latin* 'tis called, *Ordo*, *Striga*, or *Series*, which signifies an *Order*, *Row*, or *Range*. The *French* say *Va de Range*, which signifies to go up and down in Order.

12. And because a *Ranger* is specially deputed and appointed by the King to walk in the *Purlieus*, according to the Laws and Orders prescribed to him for that purpose, and which he is sworn to observe, therefore he is properly called a *Ranger*.

Regarder.

See
- *Boundaries*, 17.
- *Chief Justice*, 23.
- *Dogs*, 22, 33, 34, 50, 53.
- *Forest*, 32.
- *Forester*, 44.
- *Nusance*, 10.
- *Officers*, per totum.
- *Presentment*, 19, 20.
- *Appendix*, Charta Canuti, 2, 7.
- *Appendix*, Charta Foresta, 5.

1. BY the Laws of *Canutus*, *Canon* 2. it appeareth, That there were certain Persons who did

did then execute the ſame Office, which *Regarders* do at this Day.

2. They were in number ſixteen, and were called *Mediocres homines*; and by the *Danes*, *Young Men*: Their Buſineſs was to take the Care and Charge upon themſelves, *tam viridis quam veneris*.

3. But thoſe Officers were quite worn out, and none left in the Foreſts, when *H.* 2. came to the Crown, neither did the Foreſters or Woodmen take any regard thereof, inſomuch that the *Woods* were very much deſtroyed; and there was little or no Veniſon in the Foreſts.

4. Therefore it was ordained by the *Aſſiſes of the Foreſt* made in his Reign, in theſe Words.

5. *Item Dominus Rex præcipit quod in quolibet comitatu in quo habet venationem, ponantur duodecim Milites ad cuſtodiend. Venationem ſuam & viridem in Foreſta: Et quatuor Milites ponantur ad agiſtandum boſcos ſuos.*

6. And theſe Knights were called *Regarders*, which Name they took from their Office, becauſe they were *agere curam cuſtodiendi viridis & veneris*, *viz.* to regard the ſafe keeping and preſerving the *Vert* and *Veniſon*.

7. In thoſe Days this Office was given only to *Knights*, but now any good and lawful Man may be appointed by the King to execute the ſame.

8. A *Regarder* is an Officer of the King's Foreſt, who is ſworn to make the Regard thereof, as the ſame hath been uſed to be made in former Time; and alſo to view and inquire of all the Offences of the Foreſt, as well as *Vert* of *Veniſon*, and of all Concealments of any Offences or Defaults of the Foreſters, and of all other Officers of the Foreſt, concerning the Execution of their Office.

How many Regarders there muſt be in a Foreſt.

9. By the Aſſiſes of the Lord *William Veſey*, *Anno* 15 *Ed.* 1. it appeareth, that there muſt be twelve Regarders of the Foreſt, *viz. Quia evidenter conſtat Juſticiario itinere ſuo, quod tam magna oneratio regardatorum eſt in Foreſta prædicta, quod non eſt ſuſtinenda propter magnum Domini Regis dannum. Proviſum eſt, quod de cætero in Foreſta non ſint niſi tantum dict' duodecim Regardatores, Et quod illi Regardatores faciant regard' per totam Foreſtam quoties Aſſiſa Foreſtæ voluerit, &c.*

10. Theſe are the ſame Officers which are called *Duodecim milites*, by the *Aſſiſes* of *H.* 2. and of Neceſſity there muſt be ſo many; therefore if any of them are ſick or dead, there muſt be others choſen to make that number, otherwiſe there cannot be any Regard made in the Foreſt; for if any under that number ſhould make a certificate of their Inquiſition, 'tis not a ſufficient Charge againſt any Offender, becauſe it appeareth by matter of Record, that it was not made by the whole number of Twelve, as it ought; for it muſt be intended there are always ſo many Regarders in every Foreſt, who are bound by the Laws thereof, to view all the Treſpaſſes done therein; and 'tis not ſufficient for any under that Number to *View*, but they muſt all do it; and they muſt all certify it as their Preſentment or Verdict, like a Jury at Common Law; if eleven are agreed on a Verdict, 'tis not good if one diſagree.

How and in what manner the Regarders are made.

11. A Regarder may be made by Letters Patent by the King, or by any of his Juſtices of the Foreſt in the General Eyre, or at ſuch time as the Re-

Regard is to be made by vertue of the King's Writ, directed to the Sheriff of the County, commanding him to ſummon the whole Regard of the Foreſt to make their Regard there as uſual; and in ſuch caſe, if any is dead or ſick and cannot appear, then the Sheriff ſhall, in his *County-Court*, chooſe ſo many as will make up the Number Twelve to ſerve in their Places; the Form of which Writ is as follows. Ca. 4 *Inſt.* 291, 292.

'12. Georgius Dei gratia Magnæ Britanniæ, 'Franciæ, & Hiberniæ Rex, Fidei Defenſor, &c. 'Vic. Eſſex, ſalutem: Præcipimus tibi quod ſine 'dilatione convenire facias omnes Foreſtarios & 'Regardatores ad regardum faciendum in Balliva 'tua ante adventum Juſticiariorum noſtrorum de 'Foreſta: Et locis Regardatorum qui mortui ſunt, 'aut infirmi, alios eligi facias, ita quod duodecim 'ſint in Foreſta, & nomina eorum imbrevientur: 'Et Foreſtarii dictos duodecim Milites electos du-'cent per totam Ballivam ſuam ad vidend. omnes 'tranſgreſſiones quæ exprimuntur in Scripto Capi-'tulor. quæ tibi mittimus, & quod hoc non omittas 'pro aliqua re: Et quod dicti Milites jurent quod 'facient Regardum ſicut ſolet & debet fieri: Et 'quod ibunt ſicut Foreſtarii eos ducent ad præ-'dictam Foreſtam videndam: Et ſi Foreſtarii no-'luerint vel neſciverint eos ducere, vel aliquod fo-'riſfact. voluerint cancellare, ipſi milites non 'omittent propter illos quin foriſfactum illud vi-'deant, & imbreviari faciant: Et hoc pro nulla 're omittant. Et quod regardum illud fiat citra 'tale Feſtum. Teſte, &c.

13. Before the Chief Juſtice in Eyre holds his General Seſſions, he uſually cauſes this Writ to be made and ſent to the Sheriff of the County where the Foreſt is, and where the Juſtice-Seat is to be kept;

kept; together with an Abſtract of all ſuch Matters which the Regarders are to inquire into.

14. By vertue of which Writ the Sheriff ſummons all the Regardets and Foreſters to meet at a certain Day, and at a certain Place for that Purpoſe by him appointed; and when they meet he declares to them the Purport of the Writ, and gives them a Charge to inquire of all ſuch Matters as are contained in the ſaid Abſtract; and if any of the Regarders are dead or ſick, and cannot appear to make the Regard, the Sheriff ſhall chooſe others to make up twelve in Number to ſerve in their Places.

15. The *Regarders* thus choſen muſt be ſworn by the Sheriff in the County-Court, and that by vertue of the Writ, *viz. Et dicti Milites jurent quod facient Regardum ſicut ſolet & debet fieri*: The Form of the Oath is as follows:

16. *YOU ſhall truly ſerve our Sovereign Lord the King in the Office of Regarder of the Foreſt of* Waltham; *you ſhall make the Regard of the ſame Foreſt in ſuch manner as the ſame hath been accuſtomed to be made; you ſhall range throughout the whole Foreſt, and through every Bailiwick of the ſame, as the Foreſters there ſhall lead you, to view the ſame Foreſt: And if the Foreſters will not or do not know how to lead you to make the Regard or Range of the Foreſt, or that they will conceal from you any thing that is forfeited to the King, you yourſelves ſhall not let for any thing, but you ſhall ſee the ſame Forfeiture, and cauſe the ſame to be inrolled in your Roll; you ſhall inquire of all Waſtes, Purpreſtures and Aſſarts of the Foreſt, and alſo of Concealments of any Offence or Treſpaſs in the Foreſt, either in Vert or Veniſon, by any Officer of the ſame Foreſt. And all theſe things you ſhall, to the uttermoſt of your Power, do;*

So help you God.

17.

17. If a Regarder is made by Letters Patent to fill up the Number of twelve, they cannot, *ex officio*, make the Regard without ſuch Writ directed to the Sheriff, becauſe, by the Authority of the Writ, he muſt ſwear the Regarders as aforeſaid; and they cannot by Law make the Regard of the Foreſt, though they are twelve in Number, until they are all ſworn; for if they do, their Proceedings are void.

18. But when once they are elected and ſworn, they may hold their Regard according to the Aſſiſes of the Foreſt *once in three Years, ex officio*, without any new Writ, Precept or Command.

19. It likewiſe appeareth, by the Statute *de Ordinatione Foreſtæ*, made *Anno* 34. *Ed.* 1. *fo.* 11. That where a Regarder is dead or ſick, or by any other Means hindered that he cannot attend the *Swanimote*, then the Lord Chief Juſtice in Eyre, or his Deputy, may appoint another in his Place; otherwiſe the Indictments in that Court cannot be found by all the Officers of the Foreſt as they ought.

20. Therefore ſuch Appointment is of Neceſſity, to make up the full Number of Twelve to ſupply the Place *pro hac vice*; but if a Regarder is *dead*, and another appointed in his Place, as before mentioned, he ſhall continue Regarder ſtill; 'tis otherwiſe where he is *ſick*, or hinder'd by any other Means; then ſuch Appointment of another to ſerve in his Place, is only at the Court. *Hesket*, *fo.* 24.

21. By *the Laws and Cuſtoms of the Foreſt*, there are three ſorts of Regarders.

22. (1) Thoſe who are made by the King's Letters Patent; and in ſuch caſe the Grant is ſometimes for Life, and ſometimes in Fee. 4. *Inſt.* 291.

23. (2) Thoſe who are made by the Chief Juſtice in Eyre, or by the King's Writ to the Sheriff,

as aforesaid; and such are only *durante beneplacito*, *viz.* during the King's Pleasure.

24. (3) Those who are made for the present Service of the *Swanimote*, or to serve at some other Time in the Absence of them who are not able to attend, or are sick; and those are *Pro hâc vice tantum*.

Of the Office and Duty of a Regarder.

25. *In Chartâ de Foresta, Artic.* 15. 'tis thus enacted, *viz. Regardatores nostri eant per forestam ad faciendum Regardum, &c.* And by the *Assises* in the Reign of *H.* 2. it appeareth, That the Regard of the Forest ought to be made by the Regarders, Foresters and Woodwards; *viz. Milites, forestarii & Woodwardi debent intentè inquirere in itinere suo quis habuerit aliquod ingenium ad malefaciend' Dominis Regi in feris suis.* Such Knights or Regarders were made at first to controul the other Officers of the Forest.

26. Their Office is to see and inquire whether any Surcharge is made in the Forest, either by the Foresters or others; and they have Authority to appoint as many Foresters as they shall think convenient to look after the Forest.

27. They must go through the whole Forest every third Year to make their Regard, and to inquire of all Offences in *Vert* and *Venison*, and of all Concealments of any such Offences by any Officer of the Forest; which Regard, in former Days, was called, *Visitatio nemorum*.

28. They must go through the whole Forest with the *Foresters* and *Woodwards* to survey all the *Assarts*, *Wastes* and *Purprestures*, and all the Faults; they must inquire who made the same, and who doth hold the Land where such Trespasses are made; and if 'tis sown with Corn, then they are

to inquire whose Corn it is, and how often it hath been sown since it was made *Assart*, *Waste*, or *Purpresture*, and how much 'tis worth to be sold, and in whose Fee the same is, and to what Town it doth belong; and having made Inquiry into all the Particulars before mentioned, then they are to write in a Roll all the antient *Assarts*, *Wastes* and *Purprestures*, and other Defaults which they have found; and they are likewise to write in another Roll all such which they have found to be newly made; and if the Foresters will not go with the Regarders to make this View and Inquiry, they may go without them.

29. They shall survey all the old and new Purprestures, and value them severally by themselves, and set down the same in the Rolls of the Forest, and in what Place they were made, whether in Woods, Plains, Heaths, Waters, Lands, Pools, Hedges or Ditches, or in any other Place in the Forest; and all such Defaults shall be written in a Roll by themselves.

30. They are to survey all the Woods which are wasted in the Forest, as well those which are antient, as those which are new, and have been made since the 2d Year of *Ed.* 1. for in most of the King's Forests there are certain Woods, which belong to the Crown; and the King hath the Regard of all the Woods and Waste Grounds, and other Lands which are afforested, and within the Boundaries of the Forest, as well of those which are not his own, as those which are.

31. And sometimes it happens that there are Woods within the Boundaries, which are no part of the Forest; as for Instance, *Walthwood* in *Essex* was within *Waltham* Forest, and yet not any part of the Forest, nor within the Regard thereof; but all such Woods which are parcel of the Forest, are within the Regard thereof, and if within the Boundaries,

daries, and yet no part of the Foreſt, there 'tis out of the Regard.

32. And this is the Meaning of the *Aſſiſes, Artic.* 3. & 4. *viz. Si quis inventus fuerit extra dominicum boſcum infra Rewardum, &c.* and ſo there is a plain Difference between *infra & extra Rewardum foreſtæ.*

33. In ſurveying the Woods they are to ſee what manner of Trees have been felled, as *Oaks, &c.* ſince the laſt Regard, and upon Inquiry and View they are to certify the Number and the Damage which hath been done to the Woods; and in like manner they are to do of all Lopping of Trees, and Deſtruction of Underwood.

34. They are to view all the Hedges and Fences for fencing the King's Woods or Lands, and whether they are kept in ſufficient Repair; and if not, then who is in Fault, and to what Damage of the King that the Fences are not kept repaired, and whether 'tis the Cauſe why the Lands or Woods lie open or common.

35. They are to ſurvey all Forges and Mines for finding out Metal in whomſoever's Fee the ſame is in the Foreſt, as well in the Woods or Lands of the King, as of any other Perſon; and what Rents and Cuſtoms they pay for the ſame, and to whom; and all Ports and Creeks of the Sea, where any Ships or Boats do or may arrive, to carry away any Timber-Wood or Underwood out of the Foreſt; and in whoſe Tenure or Occupation the ſame is or are, and by whom brought thither, and in whoſe Fee the ſame was done.

36. They are to inquire, who doth keep any Bows or Arrows, Croſs bows, Guns, Hounds or any other Engines, to hunt or deſtroy the Deer, *&c.*

37. And when they have made their Inquiry and find any Offences done and committed in the Foreſt, they are to write the ſame fairly on a Roll,

and bring it either to the *Court of Attachments*, or *Swanimote*; at the firſt of which Courts all the Officers of the Foreſt ought to aſſemble every forty Days; and all ſuch Matters as are ſo found by the Regarders, they are to *certify* under their Hands and Seals there, and likewiſe *preſent* the ſame under their Hands and Seals unto the Lord Chief Juſtice in Eyre, at the next General Eyre or Seſſions of the Foreſt, which is to be holden every Third Year; and 'tis neceſſary the Regarders ſhould make their Regard before ſuch Seſſions is holden, which muſt be done by vertue of the King's Writ, as aforeſaid, for they cannot do it without.

38. But there are ſeveral other Officers employed to make the Regard beſides theſe Regarders, and thoſe are the *Foreſters* and *Woodwards*, and other Perſons who are Owners of Woods and Lands in the Foreſt; and if any Man hath a Regard in Fee, and hath likewiſe Foreſters in Fee belonging to the ſame; in ſuch Caſe the Foreſters or Regarders of any other Regard cannot enter or do any thing therein, becauſe 'tis out of their Juriſdiction, and in the Charge of another.

39. But in ſuch caſe, the Chief Warden of the Foreſt, and the King's Foreſters and Regarders, may ſurvey the ſame, and make the Regard thereof, being within the Bounds and Limits of the King's Foreſt, though there are particular Officers for that Place.

40. This appears *in Aſſiſa foreſtæ*, in the Reign of *H.* 2. *viz. Quod omnes illi qui habent boſcos infra metas foreſtæ ponant idoneos foreſtarios in boſcis eorum de quibus, &c.*

41. And note, That a Man cannot be a Regarder for any Foreſt, but for the King's only; and no man can take upon him the Office of a Regarder in the King's Foreſt, without he hath a lawful Title to it.

42. The

42. The Words *in Charta de Foreſta* are, *viz. Regardatores veſtri eant per foreſtam, ad faciendum Regardum, &c.* from which it may be inferred, That they are not to do or certify any thing concerning their Office, without firſt viewing the ſame.

43. Therefore 'tis ſaid, *Eant per Foreſtam*; that is, They muſt go through the whole Foreſt, and through every Bailiwick thereof, to ſee and inquire of the Treſpaſſes and Offences there.

44. In the following Words, *viz. Ad faciendum Regardum*, it appears for what Cauſe they are to go through the Foreſt, and therein the whole Office of a Regarder is comprehended, which conſiſts in theſe Particulars;

45. *Ad* { *Videndum.* | *Imbreviandum.* / *Inquirendum.* | *Certificandum.* }

1. They are to certify nothing but what they have *ſeen*, and this muſt appear in the Certificate itſelf, otherwiſe the Preſentment is not good; neither ſhall the Offender be charged upon ſuch a Preſentment, but the Regarders ſhall be amerced for their inſufficient Certificate.

'Tis like the Return of a Sheriff in an Action of Waſte, where the Words *Acceſſi ad locum vaſtatum* are left out, 34 *H.* 6. or like the Preſentment of a Coroner, where the Words *Super viſum Corporis* are omitted.

But if the Regarders ſet forth in their Certificate, That they did go through the Foreſt, and that they did *view* the Treſpaſſes which they certify and preſent, when in truth they did not; yet ſuch Preſentment and Certificate is good, becauſe a Man cannot, by Law, traverſe the Return or Certificate of a ſworn Officer.

And 'tis not ſufficient, that the *View* of a few of the Regarders be certified; but it muſt be the whole Number of Twelve, and they muſt certify the ſame as their Verdict.

2. *Ad Inquirendum, viz.* The Regarders muſt go through the Foreſt, not only to *ſee* and *view* the Treſpaſſes done in the Foreſt, but alſo to *inquire* out the Certainty of every Offence, and to learn the Truth of all ſuch Matters as ſhall be delivered to them in Charge.

3. *Ad Imbreviandum*; *viz.* To inroll and enter the View and Inquiſition which they have made; ſo that when they have gone through the Foreſt, and have viewed the Treſpaſſes and Defaults, and have inquired into the Truth of every thing given them in Charge; then they muſt cauſe all thoſe Defaults to be enter'd and written fairly in a Roll of Parchment, in which Inrollment Four Things are to be obſerved.

1. What the Offence is.
2. When it was done.
3. Where it was done.
4. By whom.

4. *Ad Certificandum*; The Inrollment being thus made, there can be no Execution or Puniſhment done to the Offenders until the Regarders have made their Certificate thereof unto the Lord Chief Juſtice in Eyre, at his Juſtice-Seat.

46. But before they make ſuch Certificate to the Chief Juſtice in Eyre, they muſt preſent their Inquiſition at the *Swanimote*, before the other Officers of the Foreſt, to the Intent that the Offenders may be indicted there according to the Ordinance of

of the Forest, *Anno* 34 *Ed.* 1. for if 'tis certified to the Chief Justice before the Offenders are indicted there, then they may *traverse* the *Presentment* or Certificate, because the same was not *Præsentat' per forestarios, & duodecim juratores, & convict. per Viridarios.*

47. Next after the Words *in Charta foreſtæ* before-mention'd, *viz. Regardatores nostri eant per foreſtam ad faciendum Regardum*, there are these Words which follow; *viz. Sicut fieri consuevit tempore primæ Coronationis Regis Henrici Avi nostri, & non aliter.* Which Clause imports, That this Branch of the Statute did not ordain any new Thing, but was only made in Affirmance of the Law and Usage of the Forest in the Time of *H.* 2. *viz.* That the Regard was to be made according to *the Assises and Customs of the Forest* used in his Time; and therefore it will be necessary to shew in what Manner that was.

48. *ſſ.* The Inquiry and Presentment of all Articles must be every Third Year; for so it appears by the *Assises* of *H.* 2. *cap.* 10, 17. and then the Regard is to be made but only within the Boundaries of the Forest; for they ought not to inquire or present any thing that is done out of the Bounds, nor out of the Precinct of the Regard within the Forest: And this likewise appears by the same *Assises*, *cap.* 10, 17. for 'tis there mentioned, *viz. Those who have Woods out of the Regard of the Forest where the Wild Beasts usually rest and take Shelter, or those who have Woods or Lands in the Forest, and have the Privilege that they shall be out of the Regard, the same shall not be impeached for any Cause.*

49. But yet in such Case, those who have that Privilege ought to have a *Woodward* to look after their Woods, who must be sworn to *the Assises of the Forest*, that is, to preserve the *Vert* and *Venison*. *Hesket, fo.* 26.

49. And if the Regarders do inquire or make Preſentment of any thing done in ſuch privileged Place, it may be avoided by pleading this Matter ſpecially; for he ſhall never be puniſhed upon ſuch a Preſentment, if the Truth of it appear by Matter of Record in the Juſtice-Seat.

50. The ſame Law if the Regarders will preſent any Thing which is not ſpecified *in capitulis de Regardo fiendo*, which are always ſent to the Sheriff together with the Writ before mentioned, when the Regard is to be made.

51. As for inſtance, if they preſent that *J. R.* hath agiſted his Woods or Lands before the King's Hedge-rows in the Foreſt were agiſted, or that he hath taken any Pannage contrary to the Aſſiſes of the Foreſt: Such a Preſentment is void without any Plea, if it appears unto the Court by Matter of Record, compriſed in the very Preſentment, that the Offence therein mentioned is not what was given them in Charge to preſent or inquire into.

52. So where Regarders are choſen by Writ to the Sheriff, and afterwards make the Regard without a new Writ *within three Years, viz.* voluntarily, and of themſelves, *every Year*; Such Regard and all Preſentments againſt any Perſon whatſoever are void, and the Party againſt whom 'tis made, may diſcharge himſelf by Plea.

53. But ſuch a Preſentment made by Regarders once elected and choſen, altho' they made their Regard every *fourth Year* or *fifth Year*, that is good and ſufficient in Law, and ſhall bind the Party, tho' ſuch Preſentment and Regard was not by any command directed to the Sheriff; becauſe when they are once elected by Writ and ſworn, then they may hold their Regard according to the Aſſiſes of the Foreſt *every third Year, ex officio*, without any Writ, Precept or Command.

54.

54. *In Itinere Windſor*, *Jones's Rep.* 275. Mr. Attorney *Noy* moved, That the ſeveral Regarders might be fined, *Quia minùs plenè præſentaverunt & imperfectè*; whereupon every Regarder of *Battel's Bailiwick* was fined 5 *l.* and every Regarder of *Finchamſted Bailiwick*, 5 *l.* and every Regarder of *Fine's Bailiwick* 10 *l.*

The difference between infra Regardum Foreſtæ *and* infra metas Foreſtæ.

55. In the Ordinances of the Foreſt made *Anno* 6 *Ed.* 1. which may be ſeen in *Raſtall. Abr. Ssat. Titulo Foreſt.* 21. are often found theſe Words, *viz.* *Infra Regardum* and *infra metas Foreſtæ*, and ſometimes *in Foreſta* generally.

56. Now there is a great difference between theſe Words; for a Thing may be done *infra metas Foreſtæ*, and yet it may be *extra regardum*; but not *è converſo*; for a Thing cannot be done *infra Regardum Foreſtæ*, but it muſt of neceſſity be *infra metas Foreſtæ.*

57. As for Inſtance, in the Third *Article of the ſaid new Ordinances*, 'tis mentioned, *Si quis inventus fuerit extra Dominicum boſcum & infra rewardum proſternens quercum, &c.* there the Words *infra Rewardum* muſt be taken to be *infra metas Foreſtæ.*

58. But in the Fifth Article, the Words are, *Si quis attachiabilis fuerit contra vadios & plegios debet diſtringi per catalla ſua infra metas Foreſtæ invent.* In this Caſe, the Offender may have Cattle diſtrainable *infra metas*, and yet *extra Rewardum*; as if ſuch Cattle were remaining in certain Woods or Grounds exempted by the King's Grant from the Charge of the Foreſt; ſo that tho' they are *infra metas*, yet they are *extra Rewardum.*

59. And there are many Precedents of ſuch Exemptions; for in the Reign of *Ed.* 1. when *Hugh*

De-

Despenser was Chief Justice in Eyre of all the King's Forests *ultra Trentam*, when the Perambulations were made there, it appeared by the Claims and Charters in several *Iters*, that there were many Woods within the Limits and Bounds of the Forest, which were exempted out of the Regard.

60. And I have seen the like of several Forests on this Side *Trent*, in the Time of *Ed.* 1. when *Adam de Valentia*, Earl of *Pembroke*, was Chief Justice in Eyre of all the Forests *citra Trentam*. *In Libro Glasconiæ, fo.* 81.

61. So it may happen that some Woods may be within the Bounds of the Forest, which are no part thereof; as for Instance, *Wellwood* in *Essex* was within the Forest of *Waltham*, and yet no part thereof, nor within the Regard of that Forest; and so *Havering* Park is *infra metas Forestæ de Waltham*, but out of the *Regard* thereof, and not any part of that Forest.

62. If a Wood belonging to a Manor is *infra metas* and *extra Regardum Forestæ*, in this Case, by the Assises of the Forest, the Lord of that Manor must claim it thus, *viz. Gilbertus de Acton clamat tenere boscum suum de Trowisdale pertinen. ad maneriu[m] suum de Chad. extra Regardum Forestæ, viz. illum boscum qui est ex parte Boreali*, and recite all the Limits and Boundaries thereof.

63. But all such Woods and Lands, which are *Part* of the Forest, are within the *Regard*; and all which are within the Bounds, and yet no part of the Forest, are out of the Regard; And this is the meaning of those Words in the Ordinances and Assises of the Forest; and this Distinction was taken in the Case of Sir *John Bynn*, reported by *Bridgman*.

64. In a *Quo Warranto*, for using Liberties and Privileges therein mentioned in his Manor of *Colwick*, being within the *Metes* and *Bounds* of the

King's Forest of *Sherwood*, and within the *Regards* of the said Forest.

65. The Defendant in his Plea, did acknowledge the Manor to be within the *Metes* and *Bounds* of the Forest, but did not answer whether it was within the Regards or not; for it might be within the *Metes* and *Bounds* of the Forest, and yet not within the Regards; as if the Manor had been disafforested by *Charta de Foreste*, because it belonged to a Subject and not to the King, it might still be *within* the *Metes* and *Bounds* of the Forest, and not within the Regards; for by the disafforesting it was made *Purlieu*, and not subject to the Regards and Laws of the Forest as to the Owner of the Manor: So if the King had granted that this Manor should be free of Regards, or out of the Regards, yet it is still within the *Metes* and *Bounds* of the said Forest.

69. *In Itinere Windsor. Jones's Rep.* 289. Mr. Attorney *Noy* said, That to be out of the Regard of the Forest, is to be quit and discharged of the Fees due to Foresters, and that was all.

Rolls of the Forest.

See { *Agistment*, 14. *Regarder*, 29, 45. *Appendix*, *Assis. Foreste*, 21.

1. THE Presentments of Offences in the Court of *Attachments*, and the Indictments upon such Presentments in the Court of *Swanimote*, must be entered on the respective Rolls of the said Courts; and being sealed with the Seals of the Verderors, are to be kept by them till the

the next Juſtice-Seat, and then they are to preſent the ſame to the Lord Chief Juſtice in Eyre.

2. And if any Foreſter, Verderor, or other Officer of the Foreſt, who hath the Cuſtody of ſuch Rolls, neglect or refuſe to bring in the ſame on the firſt Day of the next Juſtice-Seat; then the Perſon ſo neglecting or refuſing, his Heirs, Executors, or the Tenants of their Lands, in what County ſoever the ſame are, ſhall be thus puniſhed, *viz.* There ſhall go forth a Precept directed to the Sheriff of that County where the Lands are, commanding him, *Quod expulſis uxore & liberis ſeiſiri faciat omnes terras & tenementa quæ fuerunt ipſius, &c. in balliva ſua. Ita quod de valore eorundem per annum reſpondeat præfat. Juſticiar', &c. niſi tenentes terræ & tenementorum ipſius prius venerint ad rotulos ſuos & alia memoranda prædicta dictum Iter tangentia reddenda, &c.*

3. The Fact contained in theſe Rolls, and of which the Party is convicted, cannot be traverſed; but a Pardon or Releaſe, or any other ſubſequent matter, ſo as 'tis not contrary to the Fact, may be pleaded, tho' it was before the Conviction. And this was the Lady *Villars*'s Caſe, who was indicted and convicted by the Verderors, for cutting Trees in the Foreſt without Warrant: And ſhe pleaded a Grant of thoſe Lands in the Foreſt, by vertue whereof ſhe felled the Trees; and this was held a good Diſcharge of the Preſentment of the Verderors. *Kellew.* 66. But it was otherwiſe in one *Gibbon*'s Caſe, who being convicted of the like Offence, pleaded the like Plea, *viz.* a Grant of the Lands and the Trees there growing; but did not alledge, that the Lands were *within the Foreſt*; ſo that he could not fell them without Licence from the King, or the Chief Juſtice of the Foreſt. *Jones* 347.

4. And if ſuch Rolls of the Foreſt or Memorandums are loſt; then by the *Aſſiſes of the Foreſt*, the

the ſaid Officers, their *Heirs*, *Executors* or *Tenants*, may pray the Juſtices of the Foreſt, that they may be admitted to pay a Fine to the King. And in ſuch Caſe the Entry is thus, *viz. Et admittuntur ad finem dimid. Marcæ, &c.*

5. But if it happen that the Rolls are burnt or deſtroyed by the Enemies, that will not be any Excuſe by the Laws of the Foreſt, tho' it may be ſo at Common Law: *Quia judicia Foreſtæ & aſſiſament. ejuſdem ſeorſim, ab aliis Regni judiciis ſecernunt, & ſolius Regis arbitrio vel ejuſdem familiar. ad hoc ſpecialiter deputati ſubjiciunt:* And therefore in this Caſe, the Officer ſhall make his Fine for the ſame, or otherwiſe his Lands ſhall be ſeiſed.

6. And the like Law, if *Agiſtors* fail of their Rolls and Accompts; and ſo likewiſe if the Verderors make Default in bringing in their Rolls and Indictments concerning the Foreſt at the next Juſtice-Seat, they ſhall be amerced and diſtrained by their Lands to bring in the ſame.

7. In the Retorn of the Writ of Summons to a Juſtice-Seat to be held for the Foreſt of *Pickering*. 4 *Inſt.* 310. 'tis thus amongſt other Things returned.

8. *Bernardus de Burgh qui obiit fuit Viridarius in Foreſta illa, & Alexander de Burgh filius ejus & hæres venit & reddidit Rotulos ſuos tam de viridi quàm de venatione tangen. Foreſtam iſtam de tempore prædicto.*

9. And my Lord *Coke* tells us, that the Law of the Foreſt is, That if a Verderor die, his Heir is to bring in the Rolls of his Anceſtor's Time; which if he do, then the Entry is in Form as above-written.

10. *Bernardus de Burgh viridar' venit & reddidit rotulos ſuos tam de viridi quàm de venatione tangent' iſtam Foreſtam, &c. Guilielmus Ward viridar' non venit ad rotulos ſuos redd': Ideo præceptum eſt vicecom' ſeiſire omnes terras & tenementa ſua, &c. Poſtea venit*

præd

præd' Guilielm' & petit admitt' ad finem faciend' die Martii, &c. & quoad rotulos suos dicit quod furati fuerunt ab eo per quosdam Malefactores, & petit quod possit admitti ad finem faciend' cum Domino Rege in hac parte, & admittitur pro fine 100 *s. Intratur Foresta Pick.* 8 *Ed.* 1. *coram Justiciar. Itineran.*

11. *Johannes Kilmington nuper Custos Forestæ istius dicit quod præd. feræ acciderunt in Morina quorum corpora putrida fuerunt suspensa super quercus, & de hoc vocat record' rotulorum viridariorum, &c.*

12. *Forestarii venerunt & dicunt pro seipsis & omnibus aliis Forestar. istius forestæ, Quod ipsi forestarii nunquam fuerunt onerati de aliquibus Rotulis, seu indictament' tangentibus forestam. Et quod omnes Rotuli & Indictament' remanent penes viridar', &c. Et hoc parati sunt verificare per ministros, &c. Qui quidem ministri ad hoc jurat' hoc idem testantur, &c.*

Scotale.

See { *Charge in Chief Justice*, 20.
Forester, 28, 29, 30, 31.
Appendix, Ch. Forestæ, 7.

1. *Scotale* is where any Officer of the Forest keeps an Ale-house, and by *colour of his Office*, causeth Men to come to that Ale-house in the Forest, there to spend their Money for fear of his Displeasure.

2. 'Tis prohibited by *Charta de Foresta, cap.* 7. *viz. Nullus Forestarius vel Bedellus de cætero faciat Scotellas, &c.* And the Offence is to be inquired *per duodecim juratores* at the *Swanimote*, and also at the general Sessions of the Forest; and if the Officer is attainted, he is to be punished and put out of his Office.

3. The

3. The like Law, if a Foreſter or other Officer of the Foreſt keeps a *Gaming-houſe* or *Ale-houſe* on any certain Day to ſell Ale, and by *colour of his Office*, cauſeth the People to come thither and ſpend their Money.

4. The Prohibition *in Charta de Foreſta* aforeſaid, *viz. Nullus de cætero faciat Scotallas, &c. niſi per viſum & Sacramentum duodecim Regardatorum*, doth imply, That in ſome Caſes *Scotales* may be lawful, and may remain and continue to this Time, *viz.* if they are found and preſented upon the View of the Regarders, and upon their Oaths, when they make the Regard of the Foreſt, that ſuch *Scotales* had a lawful Beginning, which muſt be either by *Preſcription*, *Grant* or *Tenure*; ſo that it may appear the Thing was lawfully done, and by right and good Title to the ſame, and not newly and wrongfully exacted on the People by *colour of the Office* of any Foreſter or other Miniſter of the Foreſt.

Sheep-Silver.

THis is an antiquated Service now turned into Money, which is paid in reſpect that anciently the Tenants waſhed the Lord's Sheep; as in ſome Places the Lords have now *Plough-Silver* and *Sheep-Silver*, which is likewiſe turned into Money and the Service ſpared. *Jones's Rep.* 280.

Staff-herding, See Common, 71.

Stewards. See Bail, 7. Foreſt, 32. Swainmote, 17, 18.

Summons. See Chief Juſtice, 21.

Swain-

Swanimote.

See { *Agistment*, 29, 32.
Charge in Chief Justice, 22.
Fence-Month, 4.
Presentment, 4, 5, 6, 8.
Venison, 6.
Appendix, in Charta Canuti, 10.
Appendix, Ch. Foreſtæ, 8.
Appendix, Aſſiſa Foreſtæ, 22.
Appendix, Ordinatio Foreſtæ, 2.

1. THis Word is derived from the *Sax.* Sƿein; *Miniſter* and Mote, which is *Curia*; ſo that 'tis properly a Court of the *Miniſters* of the Foreſt, and called *Swanimote*, becauſe 'tis but a Preparative to the Juſtice-Seat. 4 *Co.* 239.

2. Our Anceſtors had ſeveral compound Words ending in *Mote*; thus, *Halimote*, which ſignified a Court Baron; *Folkemotes* were the Courts held in *London*, where all the *Folk* or *People* of the City did complain againſt the Mayor and Aldermen for Miſgovernment. *Portmote* is ever in a *Haven Town*, for 'tis the Court of the *Port* or *Haven*; and the *Swanimote* is the Court within the Foreſt, to which all the Freeholders do owe Suit and Service.

The Verderors are Judges of this Court, and not the Chief Warden or his Deputy.

3. It was the Opinion of my Lord *Coke* in 2 *Bulſt.* 295. That a Subject may have a *Swanimote*. And in 4 *Inſt.* 289. he tells us, That the Pleas in that Court are called *Placita Foreſtæ*, but that the Verderors are the proper Judges there.

3. 4. 'Tis

4. 'Tis true, Mr. *Hesket*, *fo.* 34. mentions, That the Chief Warden of the Foreſt, or his Lieutenant may ſit there, but I know not by what Authority, for he is no *Judicial Officer*; if he was, he could not make a *Deputy*, of which there are many Inſtances in the Common Law.

5. The Chief Juſtice in Eyre is a *Judicial Officer*, and yet he may make a *Deputy*, but that is by vertue of the Statute of 32 *H.* 8. *cap.* 35. which gives him Power to make a *Deputy* to execute his Office; and this may be done by Writing under his Hand and Seal, and likewiſe under the Seal of his Office, and not otherwiſe: So that before the making this Statute, 'tis plain he had no Authority to make a *Deputy*.

6. But there is no Statute which gives the *Chief Warden* of the Foreſt any Power to make a *Deputy*; there is a Statute which ſhews that he is not a *Judicial Officer*, *viz.* The Statute of 1 *Ed.* 3. *cap.* 8. which recites, That ſeveral People have been undone by the *Chief Wardens of Foreſts*; and then it enacts, That no Man ſhall be impriſoned for *Vert* or *Veniſon*, unleſs taken *in the Manner*, or an Indictment found againſt him; and then the *Chief Warden* of the Foreſt is to diſcharge him upon Bail to appear at the next Eyre; and if he refuſe, the Party may iſſue forth a Writ out of *Chancery*, directed to him to bail him till that Time; which ſhews that he is a *Miniſterial* and not a *Judicial Officer*, and therefore the Writ is directed to him, and the Reaſon is given by the Statute, *viz.* becauſe the *Chief Warden* may not be a *Juſtice*, nor have any Record; ſo that neither he or his *Deputy* are *Judicial Officers*, and by conſequence cannot be Judges of any Court.

7. But the ſame Statute likewiſe mentions, That the Names of the *Bail* ſhall be delivered to the

Verderors, becauſe they are proper Judges of this Court.

How often the Swanimote ſhall be held in a Year, and what Officers and others are to attend.

8. Before the making of *Charta de Foreſta*, there was not any certain Time limited for the holding the Courts of the Foreſt; and therefore the *Chief Wardens* and *Foreſters* kept the Courts of *Swanimote* as often as they would, and compelled the Inhabitants of the Foreſt to attend thoſe Courts, till at laſt this became a very great Oppreſſion.

9. For theſe Courts were ſo frequently held, that the People could not conſtantly attend, and ſeveral Fees were exacted from thoſe who could not, and ſo their Appearance was excuſed.

10. To remedy which Inconveniency, it was provided by that Statute, That *nullum Swanimotum de cætero teneatur in Regno noſtro niſi ter in Anno, viz.* Fifteen Days before *Michaelmas*, when the Agiſtors of the King's Woods do meet to take Agiſtments; and about the Feaſt of St. *Martin* in the *Winter*, when the ſaid Agiſtors receive the Pannage: And to theſe two Courts of *Swanimote* the *Foreſters*, *Verderors*, *Agiſtors*, *and none other*, ſhall come, or ſhall be compelled by Diſtreſs. The third *Swanimote* ſhall be kept fifteen Days before the Feaſt of St. *John Baptiſt*, when the *Agiſtors* meet to ſawn the Deer, and the *Foreſters and Verderors*, *and none other*, ſhall come to to this Court, and if they fail, ſhall be compelled by Diſtreſs.

11. But this Law is now altered by the Statute of 34 *Ed.* 1. called, *Ordinatio foreſtæ*, *cap.* 1. and likewiſe ſeveral Years after that, *viz.* in the beginning of the Reign of King *Ed.* 3.

12. The Words *in Ordinatione foreſtæ* are, That Preſentments of Offences in *Vert* and *Veniſon* ſhall

be made in the next Swanimote, before the *Foresters, Verderors, Regarders, Agistors,* and other Ministers of the same Forest, *&c.* and that Indictments made in any other manner shall be void.

13. So that now it appeareth by this Statute, That notwithstanding the Negative Words *in Charta de foresta,* the *Foresters, Verderors, Regarders, Agistors,* and other Ministers of the Forest, are to come to this Court, and also Freeholders and all other honest and lawful Men of the Forest; for otherwise the Indictments there made are void.

14. And the Reason is, because the Indictments must be found by all the Officers of the Forest; therefore they must all be present; and if any of them are dead, or by Sickness, or any other Means, are disabled or hinder'd in coming to this Court, the Chief Justice of the Forest, or his Deputy, shall constitute others in his or their room, that the Indictments may be made by All; and this is according to *Ordinatio Foresta,* 34 *Ed.* 1. *cap.* 2.

15. Then by the other Statute, *viz.* 1 *Ed.* 3. *cap.* 8. it appears, That the *Freeholders,* and other good and lawful Men of the Forest, must be present at this Court to make Inquests and Juries there; for, by the Words of this last Statute, the Presentments must be made *per Sacramentum tam Militum quam aliorum proborum & legalium hominum de partibus vicinioribus ubi, &c.* This is also proved by the Statute of 7 *R.* 2. *cap.* 3.

16. So that though by *Charta de foresta* 'tis enacted, That only Three Sorts of Officers shall come to the *Swanimote, viz.* The *Foresters, Verderors* and *Regarders, & nulli alii per districtionem,* yet the *Woodwards,* and all other the Officers of the Forest, and all the Freeholders dwelling therein, and the Four Men and the Reeve of every Village in the Forest, must come to the Swanimote, and give

their Attendance there; and in Default thereof, ſhall be amerced, and the ſame to be eſtreated to the Chief Warden of the Foreſt, to levy it by Diſtreſs.

17. By the Words in *the Ordinance of the Foreſt, cap.* 1. *viz. Ac aliis earundem foreſtarum Miniſtris*, are meant *Stewards* of the *Swanimote*; and ſuch ſhould be learned Men, eſpecially in the Laws of the Foreſt. 6 *Ed.* 1. *cap.* 22.

18. It appeareth by *the Aſſiſes of the Foreſt, cap.* 22. That there ought to be a Steward at every Swanimote; the Words are, *Quod homo attachiatus pro ramis cæſis, placitum illud pertinet ad Swanimotum coram Seneſchallo, &c.*

19. By the Statutes before mention'd, 'tis plain, That all Offences in the Foreſt againſt *Vert* or *Veniſon*, are to be preſented at the next *Swanimote*, and 'tis there mention'd in what Manner; *viz. Coram Foreſtariis, Viridariis, Regardatoribus, Agiſtatoribus, & aliis earundem foreſtarum miniſtris, & ſi in alio modo fiat indictamentum, pro nullo penitus habeatur*; and if the Jury find the Preſentment true, then the Offender is convicted by Law, and ſhall not *traverſe* the Indictment.

20. And generally all Offences in the Foreſt are there to be preſented, and 'tis uſual for the *Steward* to give in Charge theſe Offences following:

Concerning
- *Acorns*, gathering them in Foreſt, and ſelling them in the Market.
- *Agiſtment*; What Agiſtments have been taken in to the Hurt of the Deer.
- *Aſſarts* newly made; In what Place, and by whom. *Dyer*, 7 *Eliz.* 24. *b.*
- *Browſe*; If any Warden of the Foreſt, or his Deputy, or any Foreſter, have cut *Browſe* for his own

Concerning

own Advantage, and the Value thereof.

Burning Heath, Fern or *Ling* in the Foreſt or Towns adjoining.

Church-Ways in the Foreſt ſtreighten-ed, and by whom.

Crabs growing in the Foreſt, gather-ed, and what Quantity.

Deer killed without Warrant, and by whom, and what Deer, and in whoſe Walk.

Dogs; Thoſe who do not take them up paſſing through the Foreſt, but ſuffer them to kill the Deer, the Names of the Men, and what Deer kill'd; and all Borderers keeping ſtrange Greyhounds and Dogs, not qualified to keep them.

Extortions by Officers of the Foreſt.

Fawning-time; If any Perſon come into the Foreſt at that Time to *common* Sheep, not being ſworn to preſerve the Game.

Fences; Whether well made and re-paired to ſave the King's Covert.

Foreſters; If there are more than uſu-ally have been, and who they are, and who made them.

Fox, killed in the Foreſt without War-rant.

Goats; Whether any in the Foreſt; for they are not *commonable*.

Hares; Whether any killed in the Foreſt without Warrant.

Hawks-Eggs; If taken out of the Foreſt, and by whom.

Herons-Eggs; If taken out of the Fo-reſt, *&c.*

Concerning

Hogs; If any in the Foreſt not ring'd the Number and Price, for they are forfeited.

Thoſe who have a Grant to put in a certain Number, and agiſt more than the Number, and the Price of them.

Not ringed and taken in the Foreſt ſince the laſt Seſſions, the Number and Price; for they are forfeited to the King, being not commonable.

Hogſty; If built in the Foreſt without Licence, and by whom.

Hunting the King's Deer within ſeven Miles of the Foreſt, either forty Days before or ſo many Days after the King's hunting.

Incloſing any part of the Foreſt, and thereby inlarging his own Ground; incloſing the Purlieus, or ſtreightning the Foreſt.

Meers; Carrying away or removing any Meer, Stones, or other Metes, Marks or Boundaries of the Foreſt.

Mills; Whether any new built in the Foreſt, or the old Mills not repaired, and the Damage in either Caſe.

Mines; Whether any Perſon hath digged in the Foreſt for Mines, without Licence.

Nets; Whether any kept in the Foreſt, by whom, and who hath ſet any, where and when; for 'tis unlawful, though no Deer are killed.

Par-

Concerning

Pannage; If thoſe who have Woods in the Foreſt, drive their Hogs out of thoſe Woods into the Foreſt.

Partridge-Eggs; Whether any taken out of the Foreſt, and by whom.

Pheaſants Eggs; If taken out of the Foreſt.

Pounding any Cattle out of the County.

Purlieus; Thoſe who hunt there oftner than three times in one Week, or before Sun-riſing, or after Sunſet, or with more in Company than their own Servants, or in the Fence-Month, or foreſtall the Deer in returning to the Foreſt.

Purpreſtures; If any are newly made where, what, and by whom.

Salteries; If any made in Parks or Purlieus.

Sheep; If any taken the third time ſince the laſt Seſſions, the Number and Value; for they are forfeited.

Sheep-Houſe, If any built in the Foreſt.

Suit and *Service*; Thoſe who owe any, how much behind, and on what Days.

Surcharge in the Foreſt, and by whom, and with what Cattle, or otherwiſe.

Timber cut down and employed to his own Uſe, and the Value thereof.

Trees; Whether any fell'd in the Foreſt, and by whom.

Concerning
- *Vert*; Felling Oaks or other Trees in the King's Wood, and carrying them away, the Price of the Horſes, Carts and Trees, and if any felled, then by what Authority.
- *Waifs* and *Strays*, If any ſince laſt Court.
- *Ways*; If any are ſtreightned in the Foreſt, where, and by whom.
- *Warrants*, To have Trees, and more are taken without View of the Verderors, or more Deer than mention'd in the Warrant, and what Deer, and what Seaſon.
- *Wood*; If any felled, or any manner of Underwood, and where, by whom, and the Price thereof.

21. Likewiſe the *Regarders* are to preſent at the next Swanimote after their Regard, what Maſtiffs are kept in the Foreſt unexpeditated.

22. And all Offences in the Purlieus are to be tried in this Court, but no Judgment ſhall be given in any Caſe, or Execution awarded there, for that muſt be reſerved to the Juſtice-Seat. 4 *Inſt.* 289.

23. Laſtly, In this Court enquiry muſt be made *deſuper venatione foreſtariorum & aliorum miniſtrorum foreſtæ, & de eorum oppreſſionibus populo illatis*; and may convict them, but not give Judgment.

24. And all who are indicted in this Court, and in theſe Words, *Quod ſunt Communes Malefactores de venatione Domini Regis in foreſtâ*, may be outlawed.

Venison.

See *Presentment*, 12.

1. *Venison* is a general Word for any *Beast of Forest or Chase*; 'tis called in *Latin*, *Venatio*, and no other Word is used either in *Charta de foresta*, or in *Ordinatio foreſtæ*, to express *Venison*; 'tis deriv'd from *Venor*, which signifies to *hunt*; and in a general Sense, it signifies every Wild Beast, either of the Forest or Chase, which is taken by hunting, and as well those which are not eaten for *Venison*, as those which are.

2. That which is accounted *Venison* for the Goodness of the Meat, as *Red* and *Fallow Deer*, is more properly called *Ferina*, and in this Sense 'tis used by *Virgil*,

Implentur veteris Bacchi pinguisque Ferinæ.

3. The *English* Word *Venison* is derived from the *French Venaison*, which comes from their Verb, *Venir*, which likewise signifies, to *hunt*; and in old *English* 'tis called, *Venson*, and not *Venison*; but I know not why. In *Budæus* there are these Verses:

Non est inquirendum unde venit Venison.
Nam si forte furto sit sola fides sufficit.

4. *Vert* and *Venison* are the two greatest Ornaments of every Forest, the later of which is a Word of Art proper only to Beasts of Forest, or of Chase, for no other are called *Venison*.

5. This appears *in Charta de foresta*, in these Words: *Præterea, singulis quadraginta diebus per totum annum conveniant Forestarii & Viridarii, ad videndum attachiamenta de Foresta, tam de viridi, quam de*

de venatione, where the Word *Venatio* is taken for any Beaſt of Foreſt or Chaſe.

6. And in in the ſame Charter 'tis appointed, That *Nullus Conſtabularius, Caſtellanus, vel Ballivus, teneat placita de Foreſta, ſive de Viridi, ſive de Venatione*: There likewiſe the Word *Venatio* muſt be underſtood, the killing, hunting or chaſing any Beaſt of Foreſt or Chaſe; ſo that all the Pleas of the Foreſt are, *vel de Viridi, vel de Venatione.*

7. So in *Ordinatio foreſtæ*, made *Anno* 34 *Ed.* 1. *Artic.* 1. the Words are, *Imprimis ordinavimus pro nobis & hæredibus noſtris, quod de tranſgreſſionibus in foreſtis noſtris, de viridi & venatione de cæteris factis, Foreſtarii infra quorum Ballivas hujuſmodi tranſgreſſiones fieri contigerint, præſentent eaſdem ad proximum Swanimotum, coram, &c.*

8. In which Paragraph all the Treſpaſſes in the Foreſt are comprehended by the Words, *de Viridi & Venatione*; and there the Word *Venatio* muſt be underſtood of every Beaſt meant or intended to have privilege in the Foreſt, and thoſe are Beaſts of Foreſt and Chaſe.

9. And in the ſame *Ordinance of the Foreſt, Artic.* 5. where mention is made of the King's Pardon, 'tis in theſe Words, *viz. De tranſgreſſionibus de Viridi & de Venatione*; by which is underſtood, every Treſpaſs in hunting any Beaſt of the Foreſt, whether they are Beaſts of the Chaſe or of the Foreſt.

10. The Word is likewiſe uſed *in Charta de foreſta, Artic.* 10. *Si quis captus fuerit, & convictus de captione venationis noſtræ*: There the Word *Venatio* is uſed for every Beaſt of the Foreſt and Chaſe.

11. And in the ſame Charter, Article 16. *Sed quilibet Foreſtarius de feodo attachiet placita de foreſta, tam de viridi quam de venatione*: By which it appears, That all Attachments and Pleas of the Foreſt are either of *Vert* or *Veniſon*; therefore the Word

Word *Venatio* comprehends every Beast in the Forest which hath any Privilege there.

12. And in this Sense the Word *Venison* is taken by the *French* Authors, *viz.* For every Beast of Forest or Chase. *Pierius, in Lib. Venery.*

Of the general and special Signification of the Word Venison.

13. In the general Acceptation of the Word, 'tis taken for any Wild Beast kill'd in hunting, and which are not Beasts of Forest or Chase, as *Squirrels, Goats, &c.* And *Hollingshed*, in his Description of *England*, *Pag.* 206. tells us, That, in the *East Countries*, the *Bear* is hunted, which is excellent *Venison.*

14. So that both the Words, *Venatio* and *Ferina*, in a general Sense, are taken for any Wild Beasts killed in hunting; but the Foresters and Forest-Lawyers do not take *Venatio* in that Sense, but only in a more restrained Sense; for such Beasts which are privileged in the King's Forests, and are therefore called, *Beasts of Forest*, or, *Beasts of Chase*, and no other.

15. Likewise the Word *Venison*, in a restrained Sense, is taken, by the Common People, for nothing else but the *Flesh of Red and Fallow Deer*, because that is usually eaten for *Venison.*

16. And though other Beasts of Forest and Chase are accounted *Venison* by the Foresters and others, because they make Sport in *Hunting*; yet because they are not *eaten*, therefore they are not accounted so by some Men.

17. 'Tis for this Reason that *Budæus* tells us, *Venison* is Two-fold, *viz.* Some Wild Beasts are accounted *Venison* for the Delicacy of their Flesh to be eaten, and others for the Sport and Pleasure which

which they make in *hunting*, and which are not eaten when killed.

18. *Præsentatum est per forestarios, &c. quod Gulielmus Fishborn est Communis Malefactor Venationis Domini Regis ubique in foresta illa & malefactoribus consentiens.*

Verderor.

See
- *Bail*, 5, 6, 8, 9.
- *Attachment*, 38.
- *Distress*, 1, 2.
- *Dogs*, 38.
- *Forest*, 32.
- *Nusance*, 11.
- *Officer*, 5.
- *Presentment*, 4, 7.
- *Rolls*, 1.
- *Swanimote*, 3.
- *Appendix*, in Charta Canuti, 1, 6.
- *Appendix*, Assisa Forestæ, 21.

1. A Verderor is a *Judicial Officer* of the King's Forest, chosen by his Writ in the full County in which the Forest is, and sworn to keep the Assises or Laws thereof; and also to view, receive and inroll the Attachments and Presentments of all manner of Trespasses of the Forest of *Vert* and *Venison*. 4. *Inst.* 291, 292.

2. He is called, in *Latin*, *Viridarius*, which is derived *à Viridi*, *Vert*, or *green Hue*, for his Office is principally concerned in looking after the *Vert* or *Green*, and to see it preserved.

3. The

3. The Definition above-mention'd may be explained by ſhewing,

1. In what Manner a Verderor is choſen.
2. The Form of his Oath.
3. The Extent of his Office.

4 (1) Upon a Certificate made to the King in his Court of Chancery, That *T. Barefoot*, one of the Verderors of the Foreſt of *Waltham*, is dead; he thereupon grants the Writ, *de Viridario Eligendo*, directed to the Sheriff of the County where the Foreſt is, thereby commanding him, in his full County, to chooſe another: The Writ is thus:

'5. *ſſ.* Georgius Dei gratia Magnæ Britanniæ, 'Franciæ & Hiberniæ Rex, Fidei Defenſor, &c. 'Vic. Eſſex ſalutem. Quia Tho' Barefoot nuper 'unus Viridariorum noſtrorum Foreſtæ noſtræ de 'Waltham mortuus eſt, ut accepimus, ideo tibi 'præcipimus quòd ſi ita eſt, tunc in pleno Com' 'tuo de aſſenſu ejuſdem Com' loco prædict' Tho' 'Barefoot eligi facias unum alium Viridar' qui 'præſtito ſacramento prout moris eſt, extunc ea 'faceret & conſervaret quæ ad officium Viridarii 'pertinent in Foreſta prædictâ, tamen eum eligi 'facias qui melius ſciat & poſſit officio illi inten-'dere, & nomen ejus nobis ſcire facias: Teſte, &c. 'F. N. B. 164.

The Form of his OATH.

6. (2) *YOU ſhall truly ſerve our Sovereign Lord the King in the Office of a Verderor in the Foreſt of* W. *You ſhall, to the uttermoſt of your Power, do the beſt you can for the Profit of the King ſo far as it doth appertain to you to do; you ſhall preſerve the antient Rights and Franchiſes of the Crown; you ſhall not*

not conceal from his Majesty any Rights and Privileges, nor any Offence in Vert or Venison, nor any other Thing: You shall not withdraw or abridge any Defaults, but shall endeavour your self to manifest and redress the same. And if you cannot do that of your self, you shall give Knowledge thereof to the King or to his Justice of the Forest. You shall deal indifferently with all the King's Liege People: You shall execute the Laws of the Forest, and do equal Right and Justice, as well unto the poor as to the rich, in that appertaineth unto your Office: You shall not oppress any Person by colour thereof, for any Reward, Favour, or Malice: All these Things you shall to the uttermost of your Power observe and keep. So help you God.

7. By the said Writ it appears, That a *Verderor* is to be chosen in full County by the Freeholders in the same manner as a *Coroner*; that when he is chosen, the Sheriff must give him the *Oath*; and when he is sworn, the said Sheriff must make his Return on the Writ, that by vertue thereof he hath caused an Election to be made, *&c.* and that *T. B.* is chosen, *&c.* which he must certify to the Court of *Chancery*: And in this manner, and no otherwise, a *Verderor* is made, as appeareth by the Ordinance of the Forest, made *Anno* 34 *Ed.* 1. *fo.* 11. *F. N. B.* 164.

8. (3.) The Person thus chosen ought to be an Esquire, or Gentleman of good Estate and Learned in the Laws of the Forest; and because he is chosen in the same manner as a *Coroner*, so in some respects their Office is alike; for as a *Coroner* is to make Inquest *super visum Corporis*, and upon the Oath of twelve Men, how and in what manner the Person was killed: So a *Verderor*, upon Notice given, is to view the Deer which are killed or hurt, and to take an Inquisition *per quatuor villatos propinquiores fo-*

foreſtæ, how and by whom they were killed. *Aſſiſa foreſtæ*, *Artic.* 7.

9. But his whole Office conſiſts { *Ad* { *Videndum.* *Inquirendum.* *Recipiendum.* *Imbreviandum.* *Judicandum.* *Certificandum.* }

1. He is to *view* the *Vert* and *Veniſon*; this appeareth in *Aſſiſa Foreſtæ*, *Artic.* 3. *viz. Si quis inventus fuerit extra dominicum boſcum, & infra Rewardum proſternens quercum ſine viſu aut liberatione Foreſtarii aut Viridarii, debet attachiari per quatuor plagios, & per viſum Viridar. debet quercus appraciari, & in Rotulo Foreſtar. & Viridarior. nomina pleg. imbreviari:* And tho' a Man may fell Trees in his own Grounds for neceſſary Boots by the View of the *Verderors*, they ought to preſent what was felled, and that it was by *View*, that it may appear on Record. *Jones's Rep.* 295.

2. By *Aſſiſa Foreſtæ*, *Artic.* 21. the Verderors ought to make *Inquiſition* of all Treſpaſſes in the Foreſt, as well as of thoſe which concern *Vert* or *Veniſon*.

3. They ought to *take Inqueſts* of ſuch Offences and Treſpaſſes.

4. And by the Aſſiſes of the Foreſt they ought to *Inroll* them, and likewiſe their View and Price of all Trees felled.

5. His Office is likewiſe to *Judge* of Offences and Treſpaſſes committed in the Foreſt, as in *Vert*, where the value is under 4 *d.* And by the Aſſiſes of *Lancaſter* and *York*, *fo.* 11. the Entry is, *Præſentatum eſt per Foreſtarios & convictum per Viridarios:* By which it appears, that the Office of a Verderor is a *Judicial Office*.

6. So

6. So that his Office being to *view and receive* the Attachments of the Foresters, and to Inroll them in his Rolls; it followeth that the *Verderors* are to certifie those Rolls to the Justices of the Forest, at their next General Sessions or Eyre: *Assisa Forestæ, Artic.* 21.

7. *In Itinere* for the Forest of *Dean, An.* 10 *Car.* it was held by the Judges in Eyre, That where a Man is convicted of a Fact entered in the *Verderors* Rolls, it cannot afterwards be traversed; but the Defendant may plead any Collateral Matter, as a Pardon or a Release, or any other Thing precedent or subsequent to the Conviction; so that 'tis not directly contrary to that Fact of which he hath been convicted.

3. As in the Lady *Villars*'s Case before mentioned; she was indicted and convicted by the *Verderors*, for cutting Trees in the Forest without Warrant: She pleaded a Grant to her of certain Lands *there*, and so justified the felling the Trees growing on those Lands: And this was held a good Discharge.

9. But in one *Gibbon*'s Case, who was convicted for the same Fact; he pleaded a Grant of the *Lands and Trees* growing thereon; but did not set forth in his Plea, that the Lands were *within the Forest*, as the Lady *Villars* did; and therefore he could not cut Trees without the King's Leave. *Jones*'s *Rep.* 347. *Kellew.* 66.

10. If a *Verderor* is discharged from his Office by the King's Writ to the Sheriff upon a false Suggestion made, he may have a Commission out of the *Chancery* to inquire into the same, and to certify such Inquisition into that Court; or the Justices of the Forest may certify to the Court under their Seals, that the Suggestion is false: And in such Case a *Superſedeas* shall issue to the Sheriff not to remove the

the *Verderor*, or if he is removed, then to reſtore him to his Office as before. *F. N. B.* 164.

11. A *Verderor*, and other *Miniſters* of the Foreſt, are exempted from attending the *Aſſiſes*, or to be ſworn of *Juries* there; for if he is ſummoned by the Sheriff, he may have a Writ by vertue of the Statute of 34 *Ed.* 1. by which they are exempted from all manner of Attendance there. *F. N. B.* 167. *a.*

12. There are uſually in every Foreſt of the King four *Verderors*, and they are the Judges of the Court of *Swanimote*, and Directors of all the other Officers of the Foreſt in their Courſe; and therefore when that Court is held, one of them gives a Charge, which may be ſeen in Title *Fence-month*.

In clameo Burgens' de Scarborough, coram Dno. Will. Veſey Judiciar. Foreſtæ.

13. *Et quia Viridarii præd. nihil reſponderunt de tranſgr. venationis factis in foreſta præd' hoc Anno, Ideo committuntur Priſonæ, Et educti venerunt & fecerunt finem per* 111 l.

14. *Abbas de Whitby clamat habere Viridarios ſuos proprios de libertate ſua de Whitby eligend. de cætero in pleno Comitatu Eborum. prout moris eſt, ad reſponſiones & præſentationes faciend. de tranſgreſſionibus quæ amodo fieri contingent de viridi & venatione infra metas foreſtæ de Whitby, coram Juſticiariis Domini Regis itiner. ad placita foreſtæ in partibus illis & non alibi, ſicut Viridarii foreſtæ Domini Regis hujuſmodi reſponſion. & repreſentationes facere debent & conſueverunt.*

Vert.

See
- *Attachment*, 36.
- *Chief Justice*, 9, 17.
- *Charge in Chief Justice*, 1.
- *Nusance*, 8, 16.
- *Prescription*, 20.
- *Presentment*, 12.
- *Regarder*, 5, 6, 8.
- *Appendix*, Charta Canuti, 21.
- *Appendix*, Assisa Forestæ, 1, 2, 21.
- *Appendix*, 1 Ed. 3.

1. THE Word *Vert* is derived *à Viriditate*, which signifies *Greenness*: The *French* call it *Verd*, and 'tis every green Tree in the Forest, which together with *Venison*, are the principal Ornament thereof; and therefore the Forest-Laws are very strict to preserve the *Vert*; for where that is plentiful, the *Venison* is likewise preserved; and nothing so much defaces the Forest as to cut down the *Covert*, which is the *Vert*; and for this and other Causes the Laws provide to preserve it with great care.

2. For 'tis the Nature of the Wild Beasts to frequent the *Coverts* and great *Woods*, where in the Winter they are sheltered from the Cold, and in the Summer from the Heat; and when they are hunted, they run thither for Protection.

3. The *Coverts*, *Woods*, and *Trees* in the Forest, especially those which are accompted *Vert*, bear several *Fruits* which serve to feed the Wild Beasts in the Winter, when there is very little Pasture for them elsewhere; for then they feed on Acorns, Haws, Sloes, and the like; and when such Fruits

are

are not ſufficient, then thoſe who have the Charge of them cut down the Branches of Trees (which is called Browſe wood) to feed them: So that the *Vert* is not only a Shelter, but the Food of the Deer.

4. The *Vert* is preſerved *propter decorem*, for 'tis a pleaſant proſpect for a Prince to ſee ſtately Trees, which grace the Foreſt; and Kings have often come thither, not only for the ſake of Hunting, but to refreſh themſelves with ſuch delightful Proſpects. This we find *in Libro Rubro Scaccarii, viz. Quia in foreſtis penetralia Regum ſunt, & eorum maximæ deliciæ; ad has quidem venandi cauſa, curæ quandoque depoſitis accedunt, ut modica quiete recreentur illic, ſeriis ſimul ac multis curiæ tumultibus omiſſis, in naturalis libertatis gratiam pauliſper reſpirent, unde fit ut delinquentes in ea ſoli Regiæ ſubjaceant Animadverſioni.*

5. It was a Queſtion ſoon after the making of *Charta de foreſta*, what ſhould be accompted *Vert* by the Foreſt-Laws: Some were of Opinion that it was Trees which bore *Fruit* to feed the Deer, and that nothing elſe was *Vert*. But this Matter was cleared in the Reign of *Ed.* 1. *Raſtall Abr. Stat.* Tit. *Foreſt* 41. who made this Law, *viz. Sciendum eſt quod omnes Arbores fructum non portantes, & hæ quæ fructum portant per totum annum, & fraxinus ſi antiqua fuerit in Foreſta & in arabili, hæc exiſtimabuntur Viridia, quia Rex eſt in ſeiſina:* Where the Words *Omnes Arbores* muſt be underſtood as well Underwood as Trees. *Hill.* 20. *H.* 6. *fo.* 22. 11 *H.* 4. *fo.* 32. *Caſe* 59.

6. So that *Vert* in general, is every *Tree, Underwood, Buſh,* and ſuch like, growing in a Foreſt, and bearing green Leaves, which may cover or feed the Deer.

How many Sorts of Vert there are, and the Puniſhment for cutting it.

7. (1.) There are two Sorts of *Vert* in every Foreſt, *viz. Over-Vert*, which the Lawyers call *Hault Bois*, and this is great Wood and Trees, as well thoſe which bear no Fruit, as thoſe which do, and old *Aſhes* and *Hollies*, *&c.*

(2.) *Nether Vert*, which the Lawyers call *Sous Bois*, and that is properly all manner of *Underwood*, and all *Buſhes*, *Thorns*, *Gorſe*, and the like; and ſome are of Opinion, That *Fern* and *Heath* are *Nether Vert*; but that is a Miſtake. *Fleetwood fo.* 4. *Hesket*, *fo.* 39.

8. However, 'tis not lawful for any Man to burn or deſtroy *Heath or Fern* in the Foreſt, becauſe by the Aſſiſes, *&c.* 'tis accompted Covert for the Deer.

9. The Foreſt Lawyers make another Diviſion of *Vert*, *viz. Special Vert*, which is every Tree and Buſh in the Foreſt bearing Fruit to feed the Deer, as *Pear-trees*, *Crab-trees*, *Haw-thorns*, *Black-thorns*, and the like; and 'tis called *Special Vert*, becauſe the Offence in deſtroying it is more ſeverely puniſhed than the deſtruction of any other *Vert*, according to the quantity thereof, as may be ſeen hereafter.

10. And this *Special Vert* may be either *Over* or *Nether Vert*, or both if it bear Fruit, for nothing is accompted *Special Vert*, but ſuch which beareth Fruit to feed the Deer, unleſs 'tis in the King's Woods.

11. It was adjudged in the Aſſiſes of *Pickering*, *Anno* 8 *Ed.* 3. That to cut down *Lignum Viride* or *Ramos Virides* in any Foreſt is an Offence finable; and he who ſelleth *Underwoods*, *Thorns*, *Elder-Trees*, *Boughs*, or *Lignum Siccum vel Ramos Siccos*, *vel*

hujuſmodi, is likewiſe a Treſpaſſer in *Vert*, and finable.

12. *Hollinſhead*, who was a Clergy-man and a Writer of our *Engliſh* Hiſtory, *fo.* 153, tells us, That before the making *Charta de Foreſta*, *viz. Anno* 10 *R.* 1. That King did conſtitute *Hugh* and *Gervas Nevil* and *Hugh Walley*, Juſtices Itinerants of his Foreſts, and commanded them to aſſemble the Prelates, Nobility and Freeholders, together with the Reeve, and four ſubſtantial Men of every Town or Village, to hear what he had given them in Charge concerning the Ordinances of the Foreſt, amongſt which this was one, *viz.* That he who offended in cutting down Woods or Buſhes, or in any other way deſtroying the ſame, ſhould be fined: And this is Law to this Day, for it was not altered by *Charta de Foreſta*, nor by any other ſubſequent Statute.

13. 'Tis true by the new Ordinances of the Foreſt, made *Anno* 6 *Ed.* 1. there are ſome new Offences made in *Vert*, *viz.* by cutting down *Houſe-boot* or *Hedge-boot* within their own Woods, but no alteration was made of the Puniſhment, for theſe are Offences finable as thoſe were before.

14. But the Puniſhment for killing Deer in the Foreſt, was altered by *Charta de Foreſta*; for before that Law, a Treſpaſſer in this Caſe was to loſe either his *Eyes*, *Genitals* or *Life*; but this was taken away by that Statute, *viz. Nullus de cætero amittat vitam vel membra pro venatione noſtra.*

What is Vert in the King's Woods.

15. The King hath in every Foreſt ſome Woods of his own, and every Tree which grows therein, whether great Wood or ſmall Wood, or whether it beareth Fruit or not, is accounted *Special Vert.*

16. And it was ſo accounted by the *Charter of the Foreſt*, granted by *Canutus*, *Canon* 28. *Boſco nec ſubboſco noſtro ſine Licentia primariorum Foreſtæ, nemo manum apponat, quod ſi quis fecerit, reus ſit fractionis Regalis chaceæ.*

17. And as every Tree in the *King's own Woods* is ſpecial *Vert*, ſo 'tis privileged in a particular Manner; and therefore the Offenders in the *King's Vert* are more ſeverely puniſhed than thoſe who offend in the *Vert of other Men.*

18. For whoever cuts *Buſhes* or *Thorns* in the Foreſt and in the *King's Woods*, and carries them away with Cart and Horſes, they are all to be ſeiſed to the King's Uſe; for both Cart and Horſes are forfeited, and the Offender ſhall be likewiſe fined to the value of the Wood.

19. So if he carry away the *Vert* only on Horſeback, he forfeits the Price of the *Vert*, and his Horſe ſhall be ſeiſed to the King's Uſe.

20. Every ſmall Tree or Buſh growing on the *King's Land* in the Foreſt is *Special Vert*; ſo called, becauſe the Offenders therein are more ſpecially puniſhed in manner as aforeſaid, of which there are many Precedents in the Aſſiſes of *Pickering*, *Anno* 2 *Ed.* 3. and this is one.

21. *Præſentatum eſt per Foreſtarios, & convictum per viridarios, quod Humfredus Taber cepit undecim virides quercus infra Dominicum, precii cujuſlibet* 1 *d. & cariavit illas cum uno plauſtro & ſex Bobus ad ſexdecim ſolid. pretii cujuſlibet* 2 *s.* 8 *d. unde tenentes terræ & tenementorum Rich. de S. viridarii iſtius foreſtæ, ad cujus manus pretium præd. devenit, reſpondeant, & ſimiliter pro forisfactura ejuſdem, undecim ſolidos.*

22. By which Precedent this Difference may be obſerved, *viz.* That in every Preſentment againſt an Offender in *Vert* in the *King's Woods*, 'tis ſaid to be *infra Dominicum*; and in ſuch Caſe the Cart

and Horſes, or any other Thing drawing or carrying away ſuch *Vert*, is forfeited to the King.

23. And the ſame Difference is taken in the Conſtitutions of the Foreſt, *Anno* 6 *Ed.* 1. concerning *Vert* in the *King's Woods*, where in every Branch or Article which relates to this Offence, you will find theſe Words, *Infra Dominicum*, and where they are omitted it concerns the *Vert* in *other Mens Lands*, and not in the King's.

What ſhall be Vert in the Woods of a Common Perſon.

24. The *Vert* of Common Perſons is both the great Wood and Under-wood, called *Over and Nether Vert*; but there is no *Special Vert* out of the King's Woods, but ſuch Trees which bear Fruit to feed the Deer. This appears by the Laws of *Canutus*, *Canon.* 29.

Si quis verò ilicem, aut arborem aliquam quæ victum feris ſuppeditat, ſciderit, præter factionem Regalis Chaceæ, emendet Regi viginti ſolidos.

25. And in the new *Ordinances* of the Foreſt, made *An.* 6 *Ed.* 1. *Si quis inventus fuerit extra Dom. Boſc. & infra Regardum, proſtern. quercum ſine viſu vel liberatione Foreſtarii aut Viridarii, debet attachiari per quatuor plegios, & per viſum Viridariorum debet quercus appretiari, & in Rotulo Foreſtar. & Viridar. nomina plegiorum imbreviari.*

26. So that an Oak, which beareth Acorns to feed the Deer, ſhall not be felled, tho' it grow in a Man's Freehold, without the Delivery of the Foreſters and Verderors.

27. The ſame Law of every Tree which beareth Fruit; which Trees are called *Special Vert* for another Reaſon, *viz.* Becauſe the Laws of the Foreſt do more ſpecially regard the Preſervation of them than of any other *Vert*; ſo that in the *King's Woods*, every Tree whatſoever is *Special Vert*; but

in the Woods of a *Common Perſon* 'tis otherwiſe, for no Tree is *Special Vert* there, unleſs it beareth Fruit to feed the Deer.

28. Now in ſome Caſes, thoſe Trees which are not *Special Vert*, and which grow on a Man's Freehold in the Foreſt may be cut down without Licence, *viz.* Such which ſtand ſcattering, and not together in great Numbers; and where the felling them doth not damnify any great Covert, tho' ſuch cutting is ſtill a Treſpaſs in *Vert*, yet *de minimis non curat Lex.*

29. But where they ſtand together in great Numbers, there the cutting them without Licence is puniſhable, becauſe the King by his Prerogative may uſe ſuch Coverts to ſhelter his Wild Beaſts, *Nec intereſt cujus ſunt nemora ſive Regis ſive Procerum*; as it was adjudged in *Fitzherbert*'s Caſe, *in Aſſiſ. Lancaſtr: Anno* 8 *Ed.* 3. for his Beaſts muſt have free Recourſe there, and for that Reaſon the Woods muſt not be deſtroyed.

30. If any Man offend in cutting down *Vert* in the Foreſt, and *dieth* after 'tis preſented; yet the King ſhall be anſwered for this Treſpaſs either by the *Heirs* of the deceaſed or by the Tenants of his Lands. *Aſſiſ. Pickering, fo.* 22.

Warrants.

See { *Hunting*, 10. / *Licence*, per totum. / *Purlieu*, 108, 109.

1. A Man may have a Right or Intereſt to have Yearly a Fee-Deer in a Foreſt, and this by Preſcription, as belonging to his Office of Deputy-Warden or Verderor, *&c.*

2. And

2. And where ſuch Deer have been always taken, the Foreſter, who is to ſerve it, is to take Notice of them as good Warrants, and muſt ſerve them accordingly, as he likewiſe is bound to ſerve all lawful Warrants.

3. Now in this Caſe, he who is to have the Deer muſt give Notice to the Foreſter or Keeper, when and where he will have the Deer delivered, and deſire him to execute the Warrant accordingly.

4. And if after ſuch Notice, he refuſe or neglect to ſerve the Warrant, then the Perſon who is to have the Deer may enter into the Walk of ſuch Foreſter or Keeper with Servants to hunt, kill, and carry away the ſame, and juſtify the doing it, becauſe 'tis a *Warrant of Profit*, otherwiſe he could not hunt with his Servants.

5. For he who hath an Intereſt or Right to have the principal Thing, may uſe the neceſſary means to come to it: As for Inſtance, If I have a Grant of all the Trees growing in *Alton Woods*; by this Grant I have an Intereſt in them, and therefore I may enter into the Wood and cut and carry away the Trees thro' the Ground of the Grantor, and juſtify the doing it. *Perkins, fo.* 23. *Fitz.* Tit. *Bar.* 237.

6. *In Mich.* 13 *H.* 7. *fo.* 10. an Action of Treſpaſs was brought againſt the Defendant for hunting in a Park; who pleaded, That the Plaintiff being the Owner of the ſaid Park gave a Buck to *B.* and he as a Servant of the ſaid *B.* and by his command came with him to the Park to hunt and kill the Buck: By vertue whereof he entered, *&c.* and there did kill the ſame, as it was lawful for him to do. And the Court held this to be a good Juſtification; by which it appears, That where a Man hath an Intereſt or Right to have a Deer, he may juſtify both for himſelf and *Servants* to kill and carry away. *Hill.* 13 *H.* 7. *fo.* 13. *placito* 2. like Caſe.

7. For

7. For where a Man hath a *Right*, and the Foreſter or Keeper refuſes to deliver it; in ſuch Caſe, if he could not juſtify the neceſſary Acts and Circumſtances to come at that Right, he would be without Remedy; and therefore if the Foreſter or Keeper complain of ſuch hunting and taking the Deer, either before the Juſtice in Eyre, or any other Officer of the Foreſt, the Perſon, by pleading, may juſtify it; for 'tis no Offence or Breach of the Laws of the Foreſt, the Words being, *Si quis ceperit feram ſine Warranto in foreſta, corpus ſuum arreſtetur, &c.* From which it may be inferr'd, That he may take Deer, if he hath a good Warrant. *Aſſiſa foreſtæ, Artic.* 10.

8. The Validity of every Warrant muſt be determined in the Juſtice-Seat; at which Time the *Chief Foreſter* muſt give an Account of all Deer which have been killed by Warrant; and for thoſe Warrants which have been ſerved, and not good, the Foreſter ſhall be puniſhed. *Iter. Pick. fo.* 6.

Warren.

See { *Chaſe*, 13. *Foreſt*, 39. *Incloſures*, 7. *Preſcription*, 21, 22, 23.

1. A *Warren* is a Place privileged for Beaſts and Fowls of *Warren* only; and thoſe are the *Hare*, *Coney*, *Pheaſant*, and *Partridge*: 1 *Inſt.* 233. and thoſe Warrens which are in Foreſts, are either by *Grant* or *Preſcription*.

2. If by the King's Grant, then the Words are, *Quòd ipſe & hæredes ſui habeant liberam Warrenam in omnibus dominicis terris ſuis in N. in Com' B. dum tamen feræ illæ non ſint infra metas foreſtæ noſtræ, ita quod*

quod nullus intret terras illas ad fugandum in eis, vel aliquod capiend' quod ad Warrenam pertinet.

3. And this is called, a *free* or *Charter Warren*; and every ſuch *Charter* would be very uncertain by the Words, *Quod ad Warrenam pertinet*, if it was not certainly known what were Beaſts and Fowls of Warren; and therefore, in the Regiſter in the Writ of Treſpaſs for hunting in a Warren, 'tis averred, That the Treſpaſs was done therein taking or driving away thoſe Beaſts or Fowls which are Beaſts and Fowls of Warren, which, as *Budæus* tells us, are ſuch which may be taken by long-wing'd Hawks; and thoſe are the *Hare*, the *Coney*, the *Pheaſant*, and the *Partridge*. *Reg.* 93. 69. *Lib. Int.* 585. *Tit. Hunting*, 2, 3. *Mich.* 3 *H.* 6. *fo.* 28. *Hill.* 34 *H* 6. *fo.* 34 *F. N. B.* 86, 87.

4. *Warren* may be by *Preſcription*, but not without the help of an Allowance in Eyre, and then a Grant is ſuppoſed: *Jones*, 272. This was Sir *Richard Harriſon's* Caſe, *in Itinere Windſor*, *fo.* 280. who preſcribed to have a Warren in that Foreſt; but it not being allowed in Eyre, he was fined 10 *l.* and ordered, that the Warren ſhould be deſtroyed.

5. In *Paſcha* 5 *Jacobi*. All the Judges were aſſembled to reſolve certain Queſtions concerning Foreſts and Chaſes, and amongſt other Reſolutions reported by my Lord *Coke*, 12 *Rep.* 22. this was one, *viz.* That he who hath any Freehold in a *free Chaſe*, may have a *Warren* there, either by Grant or Preſcription; and he who hath ſuch a *Warren* may keep Conies, and may lawfully build a convenient Lodge in his Inheritance there to preſerve the Game; and if he hath the *Warren* by *Preſcription*, he may not make Cony-burrows, but in ſuch Places where they uſually were made; but if by *Grant*, then he may make them where he will.

6. And becauſe *Conies* are the moſt common Beaſts of *Warren*, therefore ſeveral Laws have been made

made to preſerve them; and particularly the Statute of 1 *H.* 7. *cap.* 7. prohibits hunting in *Warrens* with *painted Faces*, or other Diſguiſes in the *Night-time*, which was commonly done in thoſe Days.

7. If the Offender, in ſuch caſe, is taken, and being brought before a Juſtice of Peace, and, upon Examination, denieth or concealeth the Hunting, 'tis Felony; but if he confeſſeth, then 'tis only finable at the next Seſſions. 2 *Rolle's Rep.* 133.

8. But then, upon ſuch Confeſſion, he may be bound to his Good Behaviour with Sureties, or he may be committed by the Juſtice, becauſe it might happen that he may not be found if any *Concealment* ſhould be afterwards proved againſt him.

9. By the Statute of 3 *Jac.* 13. 'tis enacted, That if a Man enters wrongfully into any *Ground incloſed*, and *per Statute* 23 *Car.* 2. *cap.* 25. Though 'tis *not incloſed*, and where *Conies* are uſually bred, and there chaſeth, taketh or killeth them, he ſhall be committed for three Months, and afterwards pay treble Damages to the Owner of the *Warren*, to be aſſeſſed by the Juſtice, before whom the Party is convicted, and muſt find ſureties for his Good Behaviour for Seven Years.

10. He who *kills* or *takes* Conies in the *Night-time*, upon the *Borders* of Warrens, muſt pay to the Party grieved what the Juſtice ſhall think fit, before whom he was convicted; and ſhall likewiſe pay any Sum not exceeding 10 *s.* to the Overſeer of the Poor of the Pariſh where the Offence was committed, for the Uſe of the Poor People there; or otherwiſe muſt be ſent to the Houſe of Correction for any Time not exceeding one Month.

11. The Manner of Conviction is appointed by theſe Statutes, *viz.* Either by the Confeſſion of the Offender, or by the Oath of one ſufficient Witneſs, made before a Juſtice of the Diviſion, *&c.* within a Month after the Offence committed.

12. The

12. The Party may appeal from ſuch Conviction to the Seſſions, whoſe Determination ſhall be final.

13. It hath been a Queſtion, Whether a Man could kill Conies feeding in a *Common*, and by that Means deſtroying it? It was agreed, That the Commoner had no other Remedy; and yet it was formerly held, That he could not kill them, becauſe the *Property of the Soil* was in the Lord of the Manor; and ſo long as his Conies were on his own Ground, though they are *feræ Naturæ*, they may be properly called, *Cuniculos ſuos*; for the *Commoner* hath no manner of Property in them, either *ratione ſoli*, or otherwiſe; he hath nothing to do with the Land, but to put in his Cattle to Common there; and therefore he could not kill the Conies. 4 *Leon* 7.

14. But the Law is otherwiſe; for no Man can tell whoſe Conies they are when in a *Common*: And becauſe they are *feræ Naturæ*, the Lord hath no Property in them when out of the *Warren*; and therefore the Commoner may kill them, for he hath no other Remedy to preſerve his Common from them; he cannot have an Action on the Caſe, becauſe that would create Multiplicity of Actions, which the Law will not ſuffer. 2 *Cro.* 195. *Cro. Car.* 388.

25. 'Tis true, in *Hyndley* and *Wilkinſon*'s Caſe, the Plaintiff did recover in ſuch an Action; but upon a Writ of Error brought, that Judgment was reverſed. *Jones*'s *Rep.* 356. *Cro. Car.* 387. 1 *Roll. Abr.* 405.

16. In the Caſe of *Griſell* and Sir *Thomas Leigh*, it was reſolved, That if a Man is ſeiſed of a Manor, and the Tenants have Right of *Common* in the waſte Ground there, and the King grants, that the Lord of that Manor ſhall have a *Warren* in ſuch a Part thereof; yet he cannot put in Conies in the Waſte,

Waſte, to prejudice his Tenants in their Commons there: This was in an Action of Treſpaſs. *Jones's Rep.* 12. *Winch.* 16.

Waſte in Foreſts.

1. WASTE is derived from the *French*, *Gaſter*, in *Latin*, *Vaſtare*, and it properly ſignifies a Spoil and Deſtruction in the *Coverts* and Paſtures of the Foreſt.

2. To fell or cut down any *Woods* which grow ſcattering, or any thick Covert in the Foreſt, though on a Man's own Inheritance, yet if done without Licence of the Chief Juſtice in Eyre, or View of the Foreſters, 'tis *Waſte*.)

3. There is a great Difference between *Waſte* at Common Law, and *Waſte* by the Laws of the Foreſt, I mean in reſpect of the Perſons by whom 'tis puniſhed; for at Common Law, no Man is puniſhable in an Action of Waſte, but he who hath a particular Eſtate in the Houſe or Land, as Tenant for Term of Years, or for Life, and he is puniſhable only by him who hath the *Inheritance*; but by the Foreſt-Laws, if he who hath the Inheritance doth make Waſte in the Foreſt, he is puniſhable by the King, and by no other Perſon.

4. There is a Differenee likewiſe between *Deſtruction* and *Waſte* in a Foreſt; for every *Deſtruction* of the Covert is *Waſte*, and perpetually ſo; but every *Waſte* is not *Deſtruction*; for a Man may fell his Woods and deſtroy the Covert for a time, and by preſerving the Fences, the ſame may be Coverts again.

5. But if the Owner of ſuch Woods is negligent, or doth not ſufficiently preſerve the *Fences*, after his Woods are ſo felled without Licence, that they may

may grow again, and that, in a ſhort time, this is Waſte.

6. This Difference between *Deſtruction* and *Waſte*, is warranted by *the Aſſiſes of Woodſtock, Artic.* 1. in the Reign of *H.* 2. in theſe Words; *viz. Defendit Dominus Rex quod nullus donet, vel vendat aliquod ad deſtructionem Boſci ſui, vel ad Vaſtum ſi ſit infra foreſtam Regis, &c.* where, by the Disjunctive *Vel*, it appears, That *Deſtructio* and *Vaſtum* are different Offences.

7. So that though the Fences are preſerved after the Woods are cut that they may grow again; yet this is *Waſte*, but no *Deſtruction*, becauſe the Woods are not quite deſtroyed, but may grow, being preſerved from the Cattle.

8. Like the Caſe in *Mich.* 20 *H.* 6. *fo.* 1. *placito* 5. If Tenant for Life cut down and ſell them, 'tis Waſte, though they grow again: So 'tis by the Foreſt-Law, If a Man cut down Covert in the Foreſt without Licence, 'tis Waſte, though it grow again.

9. But if a Man hath a *Licence* to ſell Woods which are Coverts in a Foreſt, and he ſelleth them, but doth not make *Fences* to preſerve the Sprouts, ſo that they are eaten and deſtroyed by the Cattle that they never grow again; this is *Waſte* and *Deſtruction*; and ſo it is if he ſell them at unſeaſonable Times, and they die and grow no more.

10. There is alſo ſome Difference in the Manner of pleading; for, in an Action of *Waſte*, at Common Law, 'tis ſaid, *Quod idem, R. B fecit Vaſtum vendicionem & Deſtructionem, &c. ad exhæreditacionem ipſius, W. N.* but in an Indictment againſt the Defendant for deſtroying the Covert in a Foreſt, 'tis ſaid, *Quod Johannes Malſa de Preſton, &c. ſuccidit Boſcos ſuos de Trowſedale infra foreſtam de Pickering, ſine Warranto Domini Regis, ad Vaſtum & De-*

Deſtructionem cooperti ejuſdem foreſtæ, & ad exilationem ferarum Domini Regis. Aſſiſa Pickering, fo. 24. *In libro Intrationis, fo.* 316. *Tit Waſte,* 1.

11. But if the Coverts are quite deſtroyed, ſo that they cannot grow again, then the Form of the Indictment is, *Quod Johannes Melſa vaſtavit & & deſtruxit Boſcos & Coopertum ejuſdum foreſtæ in Troveſdale, &c. ad Deſtructionem ejuſdem Boſci & Cooperti imperpetuum, & ad magnam exilationem ferarum Domini Regis. Aſſiſa foreſtæ de Pickering, fo.* 25, 26. Both which Precedents ſhew, that a *Waſte* and *Deſtruction* in a Foreſt are different Things.

12 And as at Common Law 'tis *Waſte* for a Leſſee for Years, willingly, to ſuffer a Meadow to be drowned, which makes it barren and full of Ruſhes; or if he convert Meadow into Arable, the ſame is likewiſe *Waſte* by the Foreſt-Law. *Mich.* 20 *H.* 6. *fo.* 1. *placito* 5.

13. So if the People of a *Townſhip* commit Waſte in the *green Hue* of the Foreſt, the whole Town ſhall be fined, *viz. de Villata de D.* 5 *l.*

The Forfeiture and Puniſhment of thoſe who commit Waſte in a Foreſt.

14. He who commits Waſte, either by felling Trees, or deſtroying any Covert or Wood, is to be fined by the Chief Juſtice in Eyre, and the whole Wood or Place ſo waſted, ſhall be ſeized for the Uſe of the King; and ſo it ſhall remain till the Owner hath paid the Fine; and if the Offender dieth before any Preſentment be made of the Offence, yet the *Heir* ſhall be fined, and the Land ſeized till he pay the Fine. *Anno* 8 *Ed.* 3. *Aſſiſa Pickering, fo.* 22.

15. The like Law when the *Waſte* in a Foreſt is done by plowing any Meadow; but in theſe Caſes

Caſes the Land is not forfeited, 'tis only to be ſeiſed, and ſo continue till the Offender hath paid a Fine.

16. Now this Fine is neither certain, nor altogether arbitrary, becauſe the Number of Acres contained in the Place waſted, are mention'd in the Indictment or Preſentment; and uſually the Chief Juſtice in Eyre doth aſſeſs the Fine according to the Number of thoſe Acres; and not only the Number, but the Value of ſuch Acres waſted, is likewiſe ſet forth in the Indictment; in which Indictment theſe Things are ſpecially to be conſidered:

1. Who made the Waſte.
2. What manner of Waſte it was.
3. When it was done.
4. Where the Ground is in which it was done.
5. In whoſe Tenure it was at that Time.
6. What Number of Acres it doth contain.
7. What every Acre is worth to be ſold.
8. Whether it is Waſte or Deſtruction, or both.
9. In whoſe Fee it is, and in what Pariſh.
10. Whoſe Inheritance it is.

17. 'Tis Waſte to cut down Trees in a Foreſt; and if the King pardons *Tranſgreſſions*, this doth not pardon the Waſte; and ſo it was adjudged in Sir *Walter Titchburne*'s Caſe, *in Itinere Windſor*, *James*'s *Rep.* 279.

Woods in Forests.

See
Boundaries, 35, 36.
Charge in Chief Justice, 68, 69, 70, 71, 72, 73, 75.
Prescription, 2, 3. 5, 9.
Purlieu. 121, 122.
Purpresture, 41.
Regarder, 30, 31, 32, 33.
Vert, per Totum.
Waste, per Totum.
Appendix, Ch. forestæ, 3, 4.
Appendix, Assisa forestæ, 3, 6.
Appendix, Ordinatio forestæ, 4.
Appendix, Stat. 1 Ed. 3.

1. 'TIS necessary, that there should be Woods in every Forest, both to *shelter*, and, at some Times, to *feed* the Deer; and therefore the Laws of the Forest have, in a particular Manner, provided for the Preservation of the Trees and Coverts there.

2. But they make some Difference between *Woods* and *Coverts*; for where the Trees grow scattering, and at such a Distance that they do not touch one another, such Places are properly called Woods.

3. *Coverts* are those Woods which are *Thickets*, and full of Trees touching one another, which, in *Latin*, are called, *Impeditissimæ Sylvæ*; and *Cicero* calls it, *Latibulum*, and sometimes *Dumetum*; *Budæus* calls it *Umbraculum*; and the old Foresters call it *Covert*; for as they call *Vert*, *à Viriditate*, so likewise by the Word *Covert*, they understand alll those Trees and Woods which grow thick together, deriving the Word from the *French Couvert*, which signifies a Covering or Hiding-place for the Deer.

4. Un-

4. Under this Title may be comprehended those Woods and Coverts which properly belong to the *King*, as growing on his *own Lands* in the Forests, and those Woods and Coverts which grow on the Lands of any of his *Subjects* there.

5. As concerning Woods and Trees growing on the *King's own Lands* in his Forests, some Questions were made in the Reign of King *James*, between the Earl of *Nottingham*, then Justice in Eyre of all his Forests, and the Earl of *Dorset* then Lord Treasurer of *England*, about the Disposal of such Trees; and all the Judges of *England* were assembled by the King's Command, who, upon Conference amongst themselves, and a mature Deliberation, resolved these four Points following, and relating to Woods and Trees:

1. That the Justices in Eyre, and the King's Officers in the Forest, have Charge of *Venison*, *Vert* and *green Hue*, for the Maintenance and Preservation of the King's Game; and of all manner of *Trees* for *Covert*, *Browse* and *Pannage*; but when there is Occasion to sell Woods in the Forest, or Timber for the King's Use, it must be taken and sold by Authority under the Great Seal, or Exchequer-Seal, by the View of the Forester, that it may not be taken in Places inconvenient for the Game; but the Justices in Eyre, or any of the King's Officers in the Forest, cannot sell or dispose of any Wood in the Forest, without Commission; and so the Exchequer and the Foresters have *divisum imperium*, the one for the Profit, and the other for the Pleasure, of the King.

2. That, regularly, neither the Court of Exchequer, nor any of the King's Officers, can dispose of the King's Timber or Woods; but

it ought to be done by Commission, and for his best Profit.

3. That every Man in his *own Woods* in the Forest, may take *House-bote* and *Hay-bote*, by the View of the Foresters: And the King's Farmers, who have Authority, by their Leases, to take Timber by View, *&c.* may take the same accordingly; and so may the Freeholders by *Prescription*; and also Copyholders who, by Custom, have used to take *House-bote*, *&c.* they may take the same by View of the Foresters or others, according to the Custom. 1 *Ed.* 3. *Stat.* 2.

4. It was resolved, That no Officer of the Forest could claim *Wind-falls*, or Dotard-Trees by *Prescription* for their Fees, because they were once parcel of the King's Inheritance; but they ought to be sold by Commission for the Benefit of the King. *Itin. Pickering*, 8 *Ed.* 3. *Rot.* 30. in the Case of *William de Persey*, and *Petronilla* his Wife.

Upon this Resolution of the Judges, the following Order was made by the Court of Exchequer:

The Order of the Exchequer about Woods and Trees in the King's Forests.

'6. WHereas heretofore some Question hath been mov'd between the Lord Treasurer of *England*, and the Warden and Chief Justice, and Justice Itinerant of all the King's Forests, Chases, Parks and Warrens on this side *Trent*, what appertaineth to each of their Offices and Places concerning the dealing with, and disposing of Woods, Trees and Coppices within his Highness's Parks, Forests and Chases, which being, by his Majesty, referred to the Consideration and

'De-

Determination of his Judges and Barons, they have resolved concerning the same, by one uniform Assent, as followeth:

'*Imprimis*. That as the Lord Treasurer of *England* for the Time being, and Court of Exchequer, have the only ordinary Power under the King, to deal therein, so far forth as it concerns the Inheritance and Profit of the Crown, as in the Sale of Woods, Trees and Coppices, and such like; so, in like manner, it concerns the Warden and Chief Justice, and Justice Itinerant of all the King's Forests, Chases, Parks and Warrens, and their Ministers, to deal therein so far as it may concern the Preservation and Maintenance of the Game, in respect of the Shades, Coverts, Pannage, and such like, for the Deer; and therefore it was resolved by all their Opinions, That the Lord Treasurer of *England*, and Court of Exchequer, may not sell any Woods or Coppices within any the King's Parks, Forests or Chases, (except Wind-falls, Root-falls, and meer dead and sear Trees) without the Privity and Allowance of the said Warden, and Chief Justice, and Justice Itinerant within whose Jurisdiction it is; nor may cut down the dead and sear Trees, nor carry them or Wind-falls, or Root-falls away, but at fit Times, and by the View of such as have Charge of the Game; so that the same may be seen to be done at fit and convenient Times; and that no Trees, other than those which are dead, and sear, and meerly Wind-falls and Root-falls, may be thrown or taken away without the Privity and Allowance of the Warden and Chief Justice, and Justice Itinerant of his Majesty's Parks, Forests or Chases.

'And for the Warden and Chief Justice and Justice Itinerant, and the Keepers and other Ministers of Parks, Forests and Chases belonging to

the King, they may not cut down any Trees for new Paling or Railing, or for repairing of Lodges without the Warrant and Allowance of the Lord Treasurer of *England* for the time being; but Timber needful for mending small Defects in old Pales or Rails broken, so as the same do not exceed two or three Timber Trees in any one Forest, Park or Chase in any one Year, they may be permitted to take off Trees in Places fit, without making any Waste thereof, or any Spoil or Prejudice to the King's Inheritance, acquainting the King's Surveyor of his Woods therewith, who is to see, that the same hath been accordingly well employed; and needful Browse also in fit Places and seasonable Times, the Keepers may take for the Deer, not cutting down the Limbs or great Boughs of the Trees. And therefore 'tis ordered by this Court, That from henceforth, where it shall be thought requisite to sell any of the King's Woods or Coppices within any Parks, Forests or Chases, that a Writ or Commission in Nature of an *Ad quod damnum*, shall be directed to the Warden and Chief Justice, and Justice Itinerant within the Forests, in whose Government the same is to be done, to inquire and certify what number of Trees and Coppices may be sold, and in what Places, to the least prejudice to the King's Game: And that upon the Return thereof, the Sale shall be made of such Trees and Coppices, as upon true Certificate shall be thought fit to be sold: And in like manner 'tis ordered, That for the new Paling and new Railing and new Building of Lodges, in any Place in or about any of his Majesty's Parks, Forests, or Chases, and the great Repairs of old Pales, Rails, or Lodges in or about the same, that it is to be done upon Certificate from the Warden, and Chief Justice, and Justice Itinerant

'rant, and the Surveyor of his Majesty's Woods, 'within whose Jurisdiction it is, by a Warrant 'from the Lord Treasurer of *England* for the 'Time being.

8. *Concerning Woods and Coverts which grow on the Lands of any Subject in the King's Forests*, they must not be cut down without *View of the Forester*, and Licence of the Chief Justice in Eyre, tho' they grow on his own Freehold; and so it was adjudged in the Reign of *Ed.* 1. *Fitz. Abr.* Tit. *Trespass*, 239.

9. The like was ordained, *Anno* 1 *Ed.* 3. *ca.* 2. *viz. That every Man who hath Woods of his own in any Forest, may take them without being attached by any Officer of the Forest, so that he do it by the View of the Foresters.* And the Reason is, because they know the Want or Plenty of other Coverts near it; but they cannot Licence any Man to cut down Wood; for that must be done by the Lord Chief Justice in Eyre, and no Man else can do it but the King.

10. *Anno* 9 & 10 *Eliz. Plowd. Com. fo.* 332. in a Case concerning the felling Woods in *Waltham* Forest, *Wray*, Chief Justice, was of Opinion, That if a Manor in the King's Forest escheats to him, and afterwards he grants the same to another in Fee; the Grantee hath not that Liberty which the King had in the Manor concerning the Forest; for notwithstanding the Grant, the King's Deer must feed there still; neither can the Grantee cut down Woods which are in the Forest without Licence of the Justice in Eyre; for that is a Thing collateral to the Soil, and Things of Prerogative, or Liberties which are collateral to the Soil, will not pass by a *Grant* thereof.

11. By which Case it appears, That a Man who hath Lands in the King's Forest must hold them

subject to the Laws thereof, unless they are exempted by some good Title; for the wild Beasts must be preserved there, which cannot be done without Coverts to rest and abide in; and therefore the King hath a Prerogative over the Woods of every Man within the Forest, so that they may not be felled without the Licence of the Chief Justice of the Forest.

12. Neither can any Man cut his own Woods in a Forest for necessary *Boote*, without *View of the Foresters*: This appears by the new Ordinances of the Forest, made *Anno* 6 *Ed.* 1. *Artic.* 6. *in Raft. Abr. Stat.* Tit. *Forest.* 21. *viz. Libertatis autem Housebote & Heybote, sint prout Boscus pati potest in statu quo est, & non ad exigentiam pernis, nec potest aliquid dare nec vendere de Bosco sine Warranto Domini Regis.*

13. But my Lord *Coke*, 4 *Inst.* 298. tells us, That a Man may prescribe to take and cut down Timber Trees in his own Woods in a Forest, without the View of the Forester, notwithstanding the Ordinance of 34 *Ed.* 1. and notwithstanding the Statute of 1 *Ed.* 3. *cap.* 2. because that Ordinance is no Statute; and the Act of 1 *Ed.* 3. is but in Affirmance of the Common Law; and that a Man may prescribe against all Statutes, which are only Declarative *antiqui juris*, and not introductory *novi juris*.

14. 'Tis true, the Chief Justice *Richardson* and Mr. Attorney *Noy*, *in Itinere Windsor*, *Jones* 271. held, That a Man cannot prescribe against a Negative Statute; and therefore a Prescription to fell Wood in a Forest without Foresters, could not be good, except it was with the help of an Allowance in Eyre: And in such Case the Court must intend a *Grant* upon which the first Allowance was made.

15.

15. But Mr. *Attorney* was of Opinion, That a *Prescription* for *House-Boot* and *Hay-boot* might be good without View of the Foresters, because of the Necessity of such *Boots*; and it may not be convenient at all Times to seek after the Foresters: Besides the Negative Words of this Statute, *viz. Nec potest aliquid dare vel vendere de bosco sine Licentia Regis*, do not extend to those Cases.

16. But he was of Opinion, That *per visum* only was not good, for it ought to be *per visum & allocationem Forestariorum & Viridariorum*: For if it be *per visum*, omitting the other Word *allocationem*; then if a Forester is required to come and view the Place, and he refuse to come, the Person might cut down the Woods without View, which is contrary to the Laws of the Forest, and for this, one *Leicester*'s Case was cited in the Dutchy. *Jones Rep.* 275.

17. This Opinion is contrary to Sir *Thomas Palmer*'s Case, 5 *Rep.* 25. where it was held, That there is no material Difference between the Words *per visum*, and the Clause *per visum & allocationem Forestariorum*; for in both Cases upon a Request, and Refusal made, the Party may take the Thing without View or Delivery.

18. *In Binere Windsor*, *Jones* 275. the Inhabitants of *Egham*, *&c.* prescribed to cut down their *Coppices* in that Forest at Pleasure: And in the same *Iter*, the Tenants of the Manor of *Bray*, which was *antient Demesne*, prescribed to sell their Woods at Pleasure, without View of the Foresters, notwithstanding the Negative Words in the Statute before mentioned. And to maintain this *Prescription*, their Counsel argued, That there was a manifest Difference between a Negative Statute declaratory of the Common Law, and the like Statute introductory of a new Law; for against the last no *Prescription* is good; but where the Statute is Negative, but

only

only declareth the old Law, there no Alteration is made; and therefore a *Preſcription* may be as well againſt it as againſt the Common Law, which is the Reaſon a Man may preſcribe to hold a Leet more than twice in a Year, tho' the Statute *de Magna Charta* is in the Negative, *viz.* That a Leet be held only twice in a Year.

And they cited a Caſe in 8 *Ed.* 3. *Itinere Pickering*, *Co. Lit.* 115. wherein *Thomas Wake* of *Lidham*, preſcribed to cut Wood without View, and Iſſue was joined on that Preſcription; and ſo is *Gilbert de Acton*'s Caſe there.

19. And likewiſe *Henry Piercy*'s Caſe in the ſame *Iter*, where the Lord of the Manor of *Seymour* claimed to cut his Wood without View; and Iſſue was likewiſe joined upon that Preſcription and found for him, and afterwards allowed in the *King's Bench*.

20. And another Caſe, *Hill.* 19 *Ed.* 1. *Rot.* 58. between a Prebendary of *Chicheſter* and the Earl of *Arundel*, where Iſſue was joined upon the like Preſcription.

21. And laſtly a Caſe, *Anno* 6 *Eliz.* reported by the Chief Juſtice *Popham*, That a Preſcription to cut down Wood without View was good.

22. To which Mr. Attorney anſwered, That a Preſcription to cut down Wood, *&c.* was not good, becauſe there can be no ſuch Preſcription ſince the Stat. of *Charta de Foreſta*: For in *Artic.* 4. 'tis enacted, That all Waſtes done after that Time, without the King's Licence, ſhall be puniſhable.

23. He agreed, That a Preſcription to cut down Wood in a *Chaſe* without View, *&c.* might be good, becauſe Chaſes are not within that Statute of *Charta de Foreſta*: and ſo it was reſolved, *Anno* 6. *Jac. Jones* 276. but be diſallowed the Difference taken by my Lord *Coke*, between a Negative Statute introductory of a new Law, and where 'tis declara-

tory

tory of the old Law; and therefore he cited a Case, 20 *H.* 6. That tho' the Statute *de sylva cædua* is only declaratory of the old Law, *viz.* That Tithes ought not to be paid of Timber-Trees; yet that Statute being in the Negative, a Prescription to have Tithe of Timber is not good.

24. As to the Case, 8 *Ed.* 3. and *Piercy's* Case, they were adjudged *in Itinere Pickering*, and therefore did not come up to the Cases in Question; because *H.* 3. gave the Forest of *Pickering* to his Son *Edmond* Duke of *Lancaster*; and so that Forest was out of the Crown, and in the Possession of a Subject when the Statute *de consuetudinibus & Assisis Forestæ* was made; and when a Forest is in the Hands of a Subject, any Man may cut his Woods there at Pleasure.

25. As for that Record cited 19 *Ed.* 1. between a Prebendary of *Chichester* and the Earl of *Arundel*; the Prescription was to sell Woods in a *Chase*, and the Statute *de Cons. & Assisis Forestæ*, relates only to Forests, and doth not extend to Chases.

26. And as for the Case, *Anno* 6 *Eliz.* reported by the Chief Justice *Popham*, that was likewise a Prescription to sell Wood in a *Chase*, whereof the King was seised in Right of his Dutchy of *Lancaster*: and no Man can shew any such Prescription to be good, except in the Cases of *Chases* as aforesaid, or those which have been adjudged in the *Iters of Pickering* Forest.

27. And he argued, That no Liberty in a Forest could be good by Prescription, which went either to the Destruction of the *Vert* or *Game*, unless they could shew an Allowance of it in a former Eyre, except only in the Case of *Common*, which is an equitable *Prescription*; and upon the Matter 'tis of Common Right, for 'tis reasonable, that since the Deer have fed on the Owners Grounds,

Grounds, that they should have *Common* in the plain Places of the Forest.

28. But *Popham*, Chief Justice, was of another Opinion, as 'tis reported by my Lord *Coke*, 12 *Rep. fo.* 23. *viz.* he cited one *St. Leger*'s Case in the *Exchequer*, who prescribed to cut Wood in the Forest of *Hay*, in the County of *Hereford*, and it was adjudged in the Time of the Chief Baron *Bret*, That such a Prescription to cut Wood in a Forest, growing on his own Inheritance, is good, altho' it was against the Ordinance of 43 *Ed.* 1. because that was only a Declaration of the Common Law, and it might be tolled by Custom. 2 *Ed.* 2. Tit. *Trespass. fo.* 9.

Ed. 1. *Trespass* 239. *Plow. Com. Dyer* 72, 322. *Ed.* 4. *cap.* 7. For, *consuetudo ex rationabili causa usitata privat Communem Legem.*

29. The Franchise of the Forest consists in *Vert* and *Venison*; now he who prescribes to have any profit in the Freehold or Inheritance of another, ought to make his Prescription in such manner as not utterly to exclude the Owner, and so must he who makes any Claim out of the Lands of another.

30. As for instance, in 2 *Co. fo.* 155. 'tis reported, That all the Judges of *England* were assembled by the King's Command in *Serjeants-Inn*, to confer of Matters concerning his Forest of *Leicester*, which he had in Right of his Dutchy of *Lancaster*; and it was by them resolved, That the Owners of Woods, growing in the Forests or Chases of a *Common Person*, and not of the *King*, may cut them down at their Pleasure, without Licence or View of the Forester; but yet so as they leave sufficient *Vert* there for the Deer.

31. The like Resolution was made in *Easter-Term*, 5 *Jac.* 12 *Rep. fo.* 22. in a Case concerning the same Forest, and likewise in a Case concerning the Forest of *Bowland* in *Warwickshire*, *viz.*

That

That the *Owners of any Freehold in free Chases*, and which are not Forests, may cut their Timber and Wood growing there, without any View or Licence of any Person whatsoever: But if he cut so much, that there is not sufficient left for the *Covert* and to maintain the King's *Game*, he shall be punished at the Suit of the King.

32. And so if a *Common Person* hath a *Chase* in the Soil of another, the Owner of that Soil cannot destroy all the *Coverts*, but ought to leave sufficient *Covert* and *Brouse-wood* as usual.

33. The Lord of a Forest may by his Officers enter into any Man's Wood growing within the Regard of his Forest, and cut down *Brouse-wood* for the Deer in Winter. *Assisa Pickering, fo.* 19.

34. And if any Man make Charcoal of *Brouse-wood* in the Forest he is finable. *Assisa Pickering, fo.* 10. and if he make Title to it by *Prescription*, but doth not make his Claim the first Day of the *Justice-Seat*, he shall answer the value of the Coals to the King.

How Men may cut down Woods on their own Lands in the King's Forests.

35. Where a Man hath Woods in the King's Forest, and hath no such Prescription, as before mentioned; yet the Law affords him a Remedy and Means to sell his Wood and Timber there, so as it be no prejudice to the Game, but that sufficient is left standing.

38. And in order thereunto he must petition the King, who will cause a Writ of *Ad quod dampnum* to be directed to the Chief Warden of the Forest, or to his Deputy, in these Words,

'Georgius, Dei gratia, Magnæ Britanniæ, Franciæ, & Hiberniæ Rex, fidei Defensor, &c. Dilecto

'fecto & fideli ſuo A. B. Cuſtodi Foreſtæ ſuæ cis-
'tra Trentam, ſalutem: Mandamus vobis, quod
'per ſacramentum tam Foreſtariorum quam Viri-
'dariorum Foreſtæ noſtræ de W. quam aliorum,
'proborum & legalium hominum de partibus illis,
'per quos rei veritas melius ſciri poterit inquiratis,
'ſi ſit ad dampnum ſeu nocumentum Foreſtæ noſtræ
'prædict' aut alicujus alterius ſi concedamus R. B.
'quod ipſe arbores in Boſco ſuo de M. qui eſt in-
'fra metas Foreſtæ noſtræ præd', ſuccidere, & eas,
'quo voluerit, cariare, ac commodum ſuum inde
'facere, & ſolum illud poſtmodum aſſartare & in
'culturam redigere, ac parvo foſſato & baſſa Haia
'ſecundum aſſiſam Foreſtæ, includere, & illud ſic
'aſſartatum, in culturam redactum & incluſum te-
'nere poſſit ſibi & hæredibus ſuis in perpetuum,
'necne; Et ſi ſit ad dampnum ſeu nocumentum
'dictæ Foreſtæ noſtræ, aut alicujus alterius, tunc
'ad quod dampnum, & quod nocumentum Foreſtæ
'noſtræ prædictæ, & ad quod dampnum & quod
'nocumentum alicujus alterius, & qualiter, & quo
'modo, & quantum Boſcus ille continet in ſe per
'numerum acrarum & quantum quælibet acra per
'ſe valeat per annum in omnibus Exitibus; &
'quantum Boſcus ille diſtat a cooperto Foreſtæ il-
'lius; & ſi ſit ibi frequens reperium ferarum no-
'ſtrarum necne, & inquiſitionem inde diſtincte &
'aperte nobis, &c.

38. This Writ may be ſeen in the Regiſter, *fo.* 257. upon the Return thereof, the King doth Licence the Party to fell the Woods. 4 *Inſt.* 298.

39. But firſt the Chief Warden of the Foreſt or his Deputy will cauſe the Foreſters, Verderors and other lawful Inhabitants in the Foreſt, near the place where the Woods are growing, to inquire and certify to the King in his Court of *Chancery*, theſe Ten Particulars following.

40. (1.)

40. (1.) Whether the cutting down the Wood will be any hurt or annoyance to the King's Forest.
(2.) Whether it will be to the hurt or annoyance of any other Person.
(3.) What hurt it will be to the King's Forest.
(4.) What hurt it will be to any other Person.
(5.) How and in what manner it will be a hurt to the King's Forest.
(6.) How and in what manner it will be a hurt or annoyance to any other Person.
(7.) How many Acres of Wood it doth contain.
(8.) How much every Acre is worth by the Year.
(9.) How far 'tis distant from any other Covert of the Forest.
(10. Whether the wild Beasts of the Forest do frequent that Wood or not.

41. And then when the Foresters, *&c.* have viewed the Place, and made *Inquisition* as aforesaid, and certified the same to the Court of *Chancery*, or to the Chief Justice in Eyre, if it appear by the said Certificate that the Wood may be conveniently cut down without any damage to the King's Forest or to any other Person, the Lord Chief Justice of the Forest may grant to the Owner of the *Wood* a *Licence* to fell the same.

42. But before he hath such *Licence*, he must come before the Chief Justice, and there be bound in a *Recognizance* to the King in a certain Sum of Money, with *Condition*, that after the same is felled, and during the space of seven Years following, he shall fence and keep the same with sufficient Hedg-

ing and ditching, ſo that it may be well preſerved from the Deer or any other Cattle during all that Time.

43. But to avoid this Charge and Trouble, the Lord Chief Juſtice in Eyre may take a ſhorter Courſe, *viz.* He may grant a Warrant under his Hand and Seal of Office, directed to the Foreſters in the ſame manner, and in the like Words as the Writ, *Ad quod dammum*, before mentioned; and in *Itinere Windſor*, the Court gave a Licence to one *Halſted* to fell Timber in his own Ground in the Foreſt, to repair a Bridge. *Jones's Rep.* 274.

44. And where the Lord Chief Juſtice grants ſuch a Warrant for felling Woods, upon an Inquiſition and Certificate to him, the Owner muſt fence them in manner as aforeſaid, that they may grow to be Woods and Coverts again; for he who hath ſuch a Licence, muſt not deſtroy the Woods, except he hath a ſpecial Licence ſo to do; *viz.* To aſſart the Place, and turn it into Tillage according to the Writ, *Ad quod dammum*, before recited.

45. In which Writ the Words are, *Parvo foſſato & baſſâ Haiâ ſecundum aſſiſam foreſtæ includere*: But that muſt be intended of Fences and Incloſures of ſuch Lands which were once Woods, and afterwards aſſarted and made Tillage: And in ſuch caſe it muſt be incloſed only with a ſmall Ditch and a low Hedge; but where 'tis to be preſerved as *Wood-Land* ſtill, it may be incloſed with great *Ditches*, and high Hedges, to keep the Deer out. *Per Stat. 22 Ed. 4. cap. 7.*

46. But though a Man may cut his Woods for neceſſary *Boots*, by *View of Foreſters*, and by vertue of ſuch a Warrant or Licence from the Chief Juſtice in Eyre; yet the Officers ought to preſent it at the next Court of *Attachments*, *viz.* How much was fell'd; and that it was done by the *View of the Foreſters*, that it may appear on Record: This was

the

the Opinion of Mr. Attorney *Noy*. *In Itinere Windsor*, *Jones*, 295.

47. *In eodem Itinere Jones Rep.* 297. One *Oakley* was presented for suffering several great Oaks to stand to the Destruction of all the *nether Vert*. The same Attorney *Noy* held, That though a Man could not fell his Timber or Wood without Licence, yet he was of Opinion, that the Law would not compel him to fetch a Licence, and by consequence, that the Court could not punish him for letting his Oaks stand.

48. Upon the whole matter, a Man may take Estovers in his own Woods by the *View of the Forester*; but they must not take any thing for their View; and if they do, 'tis Extortion. *Jones's Rep.* 277.

49. *Anno* 8 *Car.* One *Moor* was presented *in Itinere Windsor*, for suffering three Roods of Wood to be spoiled with Cattle, who came and shewed to the Court, That the Fence through which the Spoil was made, belonged to another to make; and so the Spoil was in his Default: But Mr. Attorney *Noy* argued, That it being in the Forest, he whose Wood is in danger of being spoiled, ought to request the other to make the Hedges; and if he refuse, then he must do it himself, and bring an Action on the Case against the other who ought to have done it; and therefore, for this Offence, *Moor* was fined 40 *s.* *Jones's Rep.* 277.

50. *In eodem Itinere*, One *Rapley* being presented for cutting unlawful *Brouse-wood*, alledged, That he cut it by the King's Command, being an Under-keeper in the Forest of *Windsor*, and was ordered by the King to fell it, and to buy Hay for the Deer in a hard Winter: To which the Court reply'd, That though the King is to be obeyed, yet there is a legal way to have his Commands put in Execution; and therefore, not having the

Woods viewed where the *Browse* might best be spared, and not procuring a Licence in an orderly Method, he was fined 10 *s.* *Jones's Rep.* 279. But a Lord of a Forest may enter, by his Officers, into any Man's Woods growing in the Regard thereof, and cut down *Browse-Wood* in the Winter for the Deer. *Assis. Pick. fo.* 19. 'tis called, *Gablicia.* *Itin. Lanc fo.* 172.

51. So likewise one *Clifton* being presented for felling and carrying away seven Timber Trees, alledged to the Court, That they were felled to repair some *Bridges* which the King was to repair, and the Lops were sold to pay for the Workmanship; all which was affirmed by the Verderors, and yet for the undue way of taking the Trees, he was fined 5 *s.* *Jones's Rep.* 279.

52. In the same *Iter*, several of the Tenants of *Warfeild* being presented for cutting their Woods *without Licence*, desir'd that their Offences might be respited until Mr. *Nevil*, who was Lord of that Manor, came of Age, who was then the King's Ward, and had put in a Claim to discharge himself and his Tenants from all Fines by reason of any Offences.

53. Mr Attorney reply'd, That as to all Lands which, by Office, appeared to be in the King's Hands by reason of the Wardship, the Ward should receive no Prejudice, but that should be respited; and as for the other Lands, it was unreasonable that the Tenants should continue unpunished, unless they could make it appear, that the Ward had such a Franchise; and so divers of them were fined. *Jones's Rep.* 288.

54. If a Man fire any dry Oaks in a Forest, he is punishable by *Assisa Forestæ.*

55. If any Forester take Money for *Bark*, his Lands shall be seised for the Money. *Itin. Lanc. fo.* 7.

56. If any take Hawks, or destroy Eyries of Hawks in the King's Woods, he shall be fined.

57. At every Justice-Seat the Number of *Trees* which have been given away by *Warrant*, must be presented, and all *Windfalls* in the Forest since the last Court. *Itin. Lanc. fo.* 3. 8. and this is usually done by the Chief Forester. *Assis. Pick. fo.* 7, 18.

58. *Ministri forestæ præsentant quod Johannes de Aslaby cepit infra dominicum quatuor quercus pretii* 4 *d. Et dimissus fuit per viridarios manucaptoribus usque ad istam Assisam: Qui modo non venit. Ideo ad judicium de manucaptoribus & præd. Johan respondeat domino Regi de pretio præd. & pro forisfacturâ ejusdem* 4 *s.*

59. *Et quod Humfridus Tober cepit undecim quercus virides infra dominicum pretii cujuslibet* 1 *d. & carcavit illas cum uno plaustro & sex bobus quæ appretionat. viz. Plaustrum ad* 6 *d. & Boves ad* 16 *s. pretii cujuslibet* 2 *s.* 8 *d. unde Tenentes terræ & tenementorum Richardi de S. viridarii istius forestæ, ad cujus manus præd. devenit respondeant, & similiter pro forisfacturâ ejusdem* 11 *s.*

60. *Item præsentant quod Prior de Maldon cepit* 11 *plaustra Spineti in B. infra dominicum pretii* 11 *d. & per Viridar. dimissus fuit per manucaptores usque ad Assisam istam, &c. Qui modo venit, &c. Et super hoc convictus oneratur erga Dominum Regem de pretio præd. & pro forisfacturâ ejusdem* 11 *s.*

61. *Item quod Robertus Scalby cepit unam viridem quercum, &c. pretii* 1 *d. unde tenen. Viridar. respond. de pretio præd. & pro forisfactura* 6 *d. ad quorum manus pretium & forisfactura præd. devenerunt.*

62. The Paragraphs before-mention'd are Forms of Entries in *the Assises of Pickering, Anno* 8 *Ed.* 3. And in the same *Assises, fo.* 15, 17, 19. and in *the Assises of Lancaster, fo.* 9. it appeareth, That *William* Earl of *Warren*, by Deed, granted to the Abbot of *Furneaux*, that he and his Successors might take, within his Forest of *Lancaster*, *Maeremium*, *&c.*

Quæ ad usus suos sunt necessaria, & nominatim ad piscar' suam de Lancastr. faciend, quicquid eis ad hoc opus fuerit. By vertue whereof, the Abbot claimed Timber, both for his Messuage of *B.* and for his Piscary; and that he had enjoyed the same by the Word *Maeremium* ever since the Grant, and that without the View of the Foresters; and the Usage being found by the Jury, his Claim was allowed.

63. If a Wood is surrounded with the Forest, but yet out of the Regard thereof, the Owner must make his Claim in these Words: *Gilbertus de Acton clamat tenere Boscum suum de Trovesdale pertinen' ad manerium suum de B. extra Regardum forestæ, viz. Illum boscum qui est ex parte Boreali, &c.* and so express the Limits, *&c.*

Estovers.

64. If a Man hath Estovers allowed for making a Hedge, which Hedge would have lasted Two Years, but is burned in the first Year; in this Case, *per Assisas Forestæ*, he shall not be allowed new *Estovers*; and if he take more Estovers than he ought at one Time, they shall be seised, and the Party fined. *Itin. Pick. fo.* 3.

65. If he who hath *Estovers* in a Forest, make *Hurdles* of them, and sell those Hurdles, he is punishable.

66. *Ministri forestæ dicunt quod Tho. Wake, & omnes ill. &c. à tempore quo non extat memoria hominum habuerunt, &c. liberatione boscum in Communibus boscis suis pro se, &c. ad quodlibet attachiamentum & hoc sufficientiam bosci.*

67. *Præsentat' est quod Johan' Lancastriæ cepit tres quercus in foresta istâ; Qui venit & dicit quod eas habuit ex liberatione forestariorum pro Estoveriis suis, &c. Et quia hoc testatam est per Rotulos viridariorum esse verum Ideo dictus Johan. inde eat, &c.*

68. *Et quia inspectis Rotulis Viridar. istius forestæ nihil compertum est de pretio corticum trium quercuum præ-*

prædict' Ideo ipsi liberantur prisonæ, & ducti finem fecerunt cum Domino in hac parte dimid. marcæ.

Woodward.

See *Common*, 34, 42.
Foreſt, 32, 34.
Officer, 5.
Regarder, 25, 28, 38, 48.
Swanimote, 26.
Appendix, Aſſiſa Foreſta, 12.

1. A Woodward is an Officer of the Foreſt whoſe Charge is to look after the Woods and *Vert* there; his very Name denotes his Office, and he is often mentioned in *the Aſſiſes and Ordinances of the Foreſt.*

2. *In Aſſiſ. & Conſuetudinibus Foreſtæ, Anno* 6. *Ed.* 1. *Artic.* 12. *viz. Si Woodwardus viderit Malefactores in cuſtodiâ ſuâ vel beſtiam mortuam, debet monſtrare capitali Foreſtario, vel Viridario.*

3. Mr. *Manwood* infers from this Article, That a *Woodward* may *monſtrare*, but he cannot *attachiare*; that is, he may preſent Offenders, but cannot attach them.

4. But if he had conſidered the Article immediately preceding in the ſame *Aſſiſes*, I cannot imagine how he could be of that Opinion, *viz.* Artic. 11. *Si quis viderit aliquos Malefactores infra Metas Foreſtæ aliquam feram capere vel aſportare, debet illos capere ſecundùm poſſe ſuum.*

5. Now the Words, *Si quis viderit Malefactores, &c.* are general, and extend as well to *Woodwards* as to *Foreſters*, or any other Miniſters of the Foreſt: 'Tis true, if a *Woodward* ſee *Beſtiam mortuam*, he is commanded by that Article, *Monſtrare*

eam Capitali foreſtario; but if he ſee *Malefactores in Cuſtodiâ ſuâ*, it may be impoſſible for him *monſtrare eos Capitali Foreſtario*, becauſe they may be gone before he finds the Foreſter; therefore it ſeems plain by thoſe Laws, that he may attach them.

6. This Officer ought to appear at every Juſtice-Seat, and when he is call'd, he muſt preſent his *Hatchet* to the Lord Chief Juſtice in Eyre. *Jones's Rep.* 266.

7. He is likewiſe to appear at every Court of *Attachments*, and there to preſent all Offences done within his Charge.

8. *In Itinere Windſor*, *Jones's Rep.* 280. Mr. *Reſton* claimed the *Woodwardſhip* of all the King's Woods in *Cokeham* and *Bray*, by vertue of a Grant from King *James* I. *Habendum officium prædict. unacum omnibus & omnimodis boſcis vocat.* Windſor & Fee-Trees *in boſcis præd. vel in eorum aliquo cum omnibus aliis proficuis, &c. dicto officio aliquo modo debitis, conſuetis, pertinen. ſive ſpectan. &c. in tam amplis modo & forma prout aliquis alius dictum officium habuit, &c.*

9. It was adjudged, that he had no Title to the *Fee-Trees* by this Patent, becauſe he had made no Title to the Office of *Woodward* by *Preſcription*; for he doth not ſay that it was an antient Office, or that there were any Fees belonging to it; and without ſuch an Averment, *viz.* of what did *antiently* belong to the Office, this Grant is very uncertain, for it doth not ſhew what Fees he ſhall have, the Words being, *Una cum vadiis & feodis eidem Officio ſpectan'*, without any Averment, that thoſe Fees which he claimed, did belong to his Office; and then the ſubſequent Words, *viz. In tam amplis modo & forma prout aliquis officium præd. habuit*, only relate to ſuch Fees which any Grantee *licite habuit*, and not to thoſe which he took wrongfully.

10.

10. And the Attorney-General *Noy* affirmed, That Mr. *Reſton* could not *preſcribe* to this Office, becauſe there was no *Woodward* in thoſe Places before the Reign of *H.* 8. but admitting the Patent to be good (which it was not in point of Law) he deſired, that the Fact might be inquired into by the Miniſters of the Foreſt, how this Office had been uſed by the Patentee, *viz.* Whether he or his Deputy-Woodward, or any of his Servants had fell'd any Trees without Warrant, or had otherwiſe misbehaved themſelves in not preſenting Abuſes; for theſe and ſuch like Offences are Cauſes of Forfeiture of his Office.

11. And it being found, that Mr. *Reſton* or his Under-Woodward, had deſtroyed, or ſuffered to be deſtroyed, ſeveral Woods committed to their Cuſtody and Charge, Judgment was given, That the Office of *Woodward* was forfeited upon finding this Abuſe. *Jones's Rep.* 280.

12. In the Caſe laſt mentioned, the Lord Chief Juſtice *Richardſon* diſliked the Penning the Patent, becauſe the Fees were not granted till after the *Habendum*, and not mentioned in the *Premiſſes*; and that there are many Caſes to prove, that nothing will paſs by the *Habendum* which is not named in the *Premiſſes*.

13. And moreover, that upon avoiding this Grant, the Spoils made by the Woodward were to be anſwered to the King; and then Inquiry was to be made, what Horſes and Carts had carry'd away the Wood and Timber; for they are all forfeited, the Timber being the King's *own*, and growing on his *demeſne Lands*: But Judgment was given as aforeſaid.

14. If a *Subject* hath any Wood in a Foreſt, and his *Woodward* ſhould neglect to appear at the Juſtice-Seat, his Wood ſhall be ſeiſed into the King's Hands,

and ſo remain till 'tis replevied by the Owner, and till he hath paid a Fine.

15. If an Owner of Woods in the Foreſt appoint and makes a *Woodward* in his Woods, where there was not ſuch Office before, 'tis finable. *Aſſiſ. Pick. fo.* 8. And if he make a Woodward where there was uſually one before, and that Woodward doth not appear at the Juſtice-Seat, the Wood is to be ſeiſed; and if he doth not replevy it in a Year, then *remaneat in manibus Dom. Regis in perpetuum*; and upon this Replevy, he is to be fined for not having a *Woodward*. If the King hath a Wood of his own in the Foreſt, and make a Leaſe of Years of it, the Leſſee muſt provide a *Woodward*. *Jovei's Rep.* 266.

16. *Miniſtri Foreſtæ dicunt quod cum contigerit quod Woodwardus præd. Prioris Sancti Johan' de Jeruſalem non veniet ad Attachiamentum Foreſtæ prout alii Woodwardi diverſorum Dominorum in Foreſta veniunt, tunc ipſe Woodwardus ſemper conſuetus eſt ibidem amerciari, & Amerciamentum inde ad opus Dom' Regis Levari, ſicut & de aliis Woodwardis qui non veniunt & fuerunt amerciati.*

17. The Office of a *Woodward*, and the Bark of Trees felled in the Foreſt, was claimed, as appertaining unto a Manor, and adjudged accordingly.

A P-

APPENDIX.

Charta de Foreſta, OF *CANUTUS,* a *Dane,* and King of this Realm; granted at a Parliament holden at *Wincheſter, Anno Dom.* 1016.

Incipiunt conſtitutiones CANUTI *Regis, de Foreſta.*

'HÆ ſunt ſanctiones de foreſta, quas ego Canutus Rex cum conſilio primariorum hominum meorum condo & facio, ut cunctis regni noſtri Angliæ Eccleſiis & pax & Juſtitia fiat, & ut omnis delinquens ſecundùm modum delicti, & delinquentis fortunam patiatur.

1. Sint jam deinceps quatuor ex liberalioribus hominibus qui habent ſalvas ſuas debitas conſuet. quos Angli *Pægened*, appell. in qualibet regni mei provincia conſtituti, ad juſtitiam diſtribuend. una cum pœna merita & materiis foreſtæ cuncto populo meo, tam Anglis quam Danis, per totum regnum meum Angliæ quos quatuor primarios foreſtæ appellandos cenſemus.

This is the firſt Conſtitution made by *Canutus*, but my Lord *Coke* bids us beware of the whole; *viz.*

This ſhews the Juriſdiction of the Court of *Swanimote*, where the *Verderors* are Judges to convict the *Regarders* and *Foreſters* of any Offence; for there their Cauſes are to be *judicatæ & deciſæ*; but they are not to be puniſhed by that Court: 'Tis true, if the Verderors offend, they are to be puniſh'd by the King or by his Chief Juſtice in Eyre, in the Juſtice-Seat, *ne ſcelus aliquod remaneat inultum.*

'11. Habeant hĩ quatuor unam regalem po-
'teſtatem (ſalvâ nobis noſtrâ preſentiâ) quaterque
'in Anno generales foreſtæ demonſtrationes & vi-
'ridis & veneris forisfactiones quas *Mucbehunt* di-
'cunt, ubi teneant omnes calumnias de materia
'aliqua tangente foreſtam, eantque ad triplex
'judicium quod Angli *of Gangfordel* dicunt. Ita
'autem acquiretur illud triplex judicium: Accipiat
'ſecum quinque & ſit ipſe ſextus & ſic jurando ac-
'quirat triplex judicium, aut triplex juramentum.
'ſed *purgatio ignis* nullatenus admittatur niſi ubi
'nuda veritas nequit aliter inveſtigari.

There were Three ſorts of Tryals formerly uſed in *England*, one was *Purgatio ignis*; and Two other by Water; and thoſe were called, by the old Writers, *Triplex judicium.*

The *Purgatio ignis* was admitted to none but the Nobility, and to ſuch who were Free-born; the Manner was thus;

ſſ. The Party accuſed was to go certain Paces with a hot Iron in his hand, which ſometimes weighed a Pound, and then it was called, *Single* or *Simplex Ordelium*; ſometimes three Pounds, and then it was called, *Triplex Ordelium*; or he was to walk Bare-foot upon red hot Plough ſhares; and, in either caſe, if he was not burnt or ſcorched, he was adjudged innocent; but if otherwiſe, he was then condemned of the Fact for which he was accuſed.

Our

Our Hiſtories mention, That *Emma*, the Mother of King *Edward* the Confeſſor, was accuſed of the Death of her Son; for which ſhe was adjudged by *Robert*, then Archbiſhop of *Canterbury*, to this Tryal; and was led blindfold by two Men to paſs over nine Plough-Shares red hot; which ſhe did Bareſoot, without any hurt. *Grafton's Chron. pag.* 180.

The other two Tryals were *per aqnam*, and thoſe were for Men of ſervile Condition; one of which Tryals was *per aquam frigidam*, and then the Accuſed was thrown into ſome Pond, River or great Veſſel of cold Water, and if he continued under the ſame for ſome time, without ſtruggling for Life, he was then acquitted; but if he laboured for Breath ſoon after he was thrown in, then he was condemned as guilty.

The Tryal *per aquam calidam* was, to thruſt his Arm up to the Shoulder into a Veſſel of hot Water, and if he had no hurt he was acquitted, otherwiſe was condemned.

Theſe Tryals were long before the Conqueſt, and were continued till the Reign of King *John*, but were totally aboliſhed by Act of Parliament in the Reign of *H.* 3. They were called in *Saxon*, Ordæle, which ſignifies *Expers Criminis*, whereof the Defendant being arraigned and pleading not guilty, it was a proper Queſtion then to ask him, how he would be tried? becauſe there were ſeveral ſorts of Tryals in thoſe Days, *viz.* By Ordeal, which was called, *Judicium Dei*, and by the Country, which was by *Jury*.

We ask the ſame Queſtion now, which is very improper, becauſe there is but one Manner of Tryal now uſed, and that is by *Jury*: And the Anſwer of the Criminal is as improper, *viz.* to ſay, That he will be try'd by God and his Country, when

when the Tryal, which in thoſe Days, was called, *Judicium Dei*, is now aboliſhed.

'Liberalis autem homo. *i. e. Pegen*, modo crimen 'ſuum non ſit inter majora, habeat fidelem homi- 'nem qui poſſit pro eo jurare juramentum, *i. e. Fo- 'rathe*: Si autem non habet, ipſemet juret, nec 'pardonetur ei aliquod juramentum.

When a Man had another to ſwear for him, this was called, *Forathe*.

'13. Si Advena vel Peregrinus qui de longinquo 'venerit ſit calumniatus de foreſta, & talis eſt ſua 'inopia ut non poſſit habere plegium ad primam 'calumniam, qualem nullus Anglus judicare poteſt: 'Tunc ſubeat captionem Regis, & ibi expectet 'quouſque vadat ad judicium ferri & aquæ: Atta- 'men ſi quis extraneo vel Peregrino de longo ve- 'nienti, ſibi ipſi nocet ſi aliquod judicium judicaverit.

'14. Quicunque coram *primariis hominibus* meis 'foreſtæ in falſo teſtimonio ſteterit & victus fuerit, 'non ſit dignus in poſterum ſtare aut portare teſti- 'monium, quia legalitatem ſuam perdidit, & pro 'culpa ſolvat Regi decem ſolidos quos *Dani* vocant '*Halfe-hang*, alias *Half-hang*.

'15. Si quis vim aliquam primariis foreſtæ meæ 'intulerit, ſi liberalis ſit amittet libertatem & omnia 'ſua, ſi villanus abſcindatur dextra.

'16. Si alteruter iterum peccaverit reus ſit mor- 'tis.

'17. Si quis contra autem cum primario pugna- 'verit, in placito emendet ſecundum pretium ſui 'ipſius, quod Angli *Pere* & *Pite* vocant, & ſolvat 'primario 40 ſolid.

'18. Si pacem quis fregit ante mediocrem foreſtæ, 'quod dicunt *Gethbreche*, emendet Regi decem 'ſolidos.

'19.

' 19. Si quis mediocrium aliquem cum irâ per-
' cuſſerit, emendetur prout interfectio feræ regalis
' mihi emendari ſolet.

' 20. Si quis delinquens in foreſta noſtra capie-
' tur, pœnas luet ſecundum modum & genus de-
' licti.

' 21. Pœna & forisfactio non una eademque erit;
' liberalis (quem Dani *Ealderman* vocant) & illibe-
' ralis, Domini & ſervi, noti & ignoti, nec una
' eademque erit cauſarum tum civilium tum crimi-
' nalium ferarum foreſtæ & feratum regalium, ve-
' neris & viridis tractatio; nam crimen veneris ab
' antiquo inter majora, & non immerito numera-
' batur: Viridis vèro (fractione chaceæ noſtræ re-
' galis excepta) ita puſillum & exiguum eſt, quod
' vix ea reſpicit noſtra conſtitutio: qui in hoc
' tamen deliquerit ſit criminis foreſtæ reus,

' 22. Si liber aliquis feram foreſtæ fugerit, ſive
' caſu, ſive præhabita voluntate, ita ut curſu celeri
' cogatur fera anhelare, decem ſolidis Regi emen-
' det; ſi illiberalis, dupliciter emendet; ſi ſervus,
' careat corio.

' 23. Si verò harum aliquot interfecerit, ſolvat
' dupliciter & perſolvat, ſitque pretii ſui reus con-
' tra regem.

' 24. Sed ſi Regalem feram, quam Angli *Stag-*
' *gon* appellant, alteruter coegerit anhelare, alter
' per unum Annum, alter per duos careat libertate
' naturali: Si verò ſervus pro utlagato habeatur,
' quem Angli *Frendlesman* vocant.

' 25. Si vero occiderit, amittet liber ſcutum li-
' bertatis, ſi ſit illiberalis careat libertate; ſi ſervus,
' vitâ.

' 26. Epiſcopi, Abbates, & Barones mei, non
' calumniantur pro venatione, ſi non regales feras
' occiderint, & ſi regales, reſtabunt rei Regi prò
' libito ſuo, ſine certa emendatione.

27.

'27. Sunt aliæ (præter feras foreſtæ) beſtiæ quæ 'dum inter ſepta & ſepes foreſtæ continentur, 'emendationi ſubjacent: Quales ſunt capreoli, 'Lepores, & Cuniculi. Sunt & alia quamplurima 'animalia quæ quanquam infra ſepta foreſtæ vi- 'vunt, & oneri & curæ mediocrum ſubjacent, fo- 'reſtæ tamen nequaquam cenſeri poſſunt, qualia 'ſunt Equi, Bubali, vaccæ, & ſimilia, Vulpes & 'Lupi, nec foreſtæ, nec veneris habentur, & 'proinde illorum interfectio nulli emendationi 'ſubjacet: Si tamen infra limites occiduntur 'fractio ſit regalis Chaceæ, & mitius emendetur. 'Aper vero quanquam foreſtæ ſit, nullatenus ta- 'men Animal veneris haberi eſt aſſuetus.

'28. Boſco nec ſubboſco noſtro ſine licentia 'primariorum foreſtæ nemo manum apponat, 'quod ſi quis fecerit, reus ſit fractionis Regalis 'Chaceæ.

'29. Si quis vero ilicem vel arborem aliquam 'qui victum feris ſuppediret ſciderit, præter fractio- 'nem regalis Chaceæ, emendet Regi viginti ſo- 'lidis.

'30. Volo ut omnis liber homo pro libito ſuo 'habeat Venerem ſive viridem in planis ſuis ſuper 'terras ſuas, ſine Chaceâ tamen: Et devitent om- 'nes meam, ubicunque eam habere voluero.

By this Law it appears, That before that Time, all Wild Beaſts, though out of the Foreſt, belonged to the King; for otherwiſe there had been no occaſion for him to grant, that every Freeman might take them on his Lands at pleaſure.

But my Lord *Coke* is of a contrary Opinion, and tells us, That if *Canutus* made any Law about this Matter, it was thus:

'*ff.* Præterea autem concedo ut in propriis ip- 'ſorum privilegiis quiſque tam in agris quam in

' ſylvis excitet agiteque feras autem meas ne ve-
' nentur cum pœna præcipio.

Which Law differs from the other in theſe Reſpects, *viz.* It extends to Woods as well as Plains; and by this Law a Man may *hunt*, but cannot by the other. 4 *Inſt.* 320.

' 31. Nullus mediocris habebit nec cuſtodiet Ca-
' nes quos Angli *Greyhounds* appellant. Liberali
' vero dum genuſciſſio eorum facta fuerit coram
' primario foreſtæ, licebit, aut ſine genuſciſſione
' dum remoti ſunt à limitibus foreſtæ per decem
' Milliaria: Quando vero propius venerint, emen-
' det quolibet Miliare uno ſolido. Si vero infra
' ſepta foreſtæ reperiatur, dominus canis forisfaciet
' & canem & decem ſolidos Regi.

' 32. *Veltres* vero, quos *Langeran* appellant, quia
' manifeſtè conſtat in iis nihil eſſe periculi, cuilibet
' licebit ſine genuſciſſione eos cuſtodire. Idem de
' canibus quos Ramhunds vocant.

' 33. Quod ſi caſu inauſpicato hujuſmodi canes
' rabidi fiant, & ubique vagantur negligentia do-
' minorum, reilduntur illiciti, & emendetur Regi
' illicitis, &c. Quod ſi intra ſepta foreſtæ reperian-
' tur tales exquiratur herus, & emendet ſecundum
' pretium hominis medioeris, quod ſecundum le-
' gem Merimorum eſt ducentorum ſolidorum.

' 34. Si canis rabidus momorderit ferarii, tunc
' emendet ſecundum pretium hominis liberalis,
' quod eſt duodecies ſolidis centum. Si vero fera
' Regalis morſa fuerit reus ſit maximi criminis.

Theſe are the Conſtitutions of *Canutus* concerning the Foreſt, very barbarouſly tranſlated out of the *Daniſh* Language into *Latin*. This *Canutus* was King of *England*, *Anno* 1018. about 49 Years before the Conqueſt.

Charta de Foresta, Anno 9 H. 3.

ALL Forests which King *Henry*, our Grandfather, afforested and made, shall be viewed by good and lawful Men; and if he hath made Forest of any other Wood more than of his own Demesne, whereby the Owner of the Wood hath Hurt, We will that forthwith it be disafforested. And if he hath made Forest of no Mens Woods but his own, then We will that it remain Forest still: Saving the Common of Herbage, and of other things in the same Forest to them which before were accustomed to have the same.

2. Men that dwell out of the Forest, from henceforth shall not come before the Justices of our Forest by Common Summons, unless they be impleaded there, or be Sureties for some other that were attached for the Forest.

3. All Woods which have been made Forests by King *Richard* our Uncle, unto our first Coronation, shall be forthwith disafforested, unless it be our Demesne Woods.

4. All Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, and other our Freeholders, which have their Woods in Forests, shall have their Woods as they had them at the time of the first Coronation of King *Henry* our Grandfather, so that they shall be quit for ever of all Purprestures, Wastes and Assarts made in those Woods after that Time, until the beginning of the second Year of our Coronation. And those that from henceforth do make Purprestures without our special Licence, or waste, or assart the same, shall answer unto us for the same wastes, Purprestures and Assarts.

5. Our Regarders shall go through the Forest to make their Regard, as it hath been accustomed at

the Tithe of the Firſt Coronation of King *Henry* our Grandfather, and no otherwiſe.

6. The Inquiry or View for lawing of Dogs being within our Foreſt, ſhall be made, from henceforth, when the Regard is made, that is to ſay, every third Year; and then it ſhall be done by the View and Teſtimony of honeſt men, and not otherwiſe. And he whoſe Dog is not then found expeditated, ſhall be amerced, and ſhall pay for the ſame, 3 s. And from henceforth no Ox ſhall be taken for lawing of Dogs; and ſuch lawing ſhall be done by the Aſſiſe commonly uſed, that is to ſay, That three Claws of the Fore-foot ſhall be cut off by the Skin. But from henceforth ſuch lawing of Dogs ſhall not be done, but in the Places where it hath been accuſtomed from the Time of the firſt Coronation of the ſaid King *Henry* our Grandfather.

7. No Foreſter or Beadle from henceforth, ſhall ſhall make Scotale, or gather Garb, or Oats, or any Corn, or Lamb, or Pig; nor ſhall make any gathering, but upon the Sight and upon the Oath of the twelve Regarders, when they ſhall make their Regard. So many Foreſters ſhall be aſſigned to the keeping the Foreſts as reaſonably ſhall ſeem ſufficient for keeping of the ſame.

8. No Swanimote from henceforth ſhall be kept within this our Realm but thrice in the Year; Firſt, the 15th Day afore St. *Michael*, when that our Giſtakers of our Woods come together to take Agiſtment in our Demeſne Woods; and about the Feaſt of St. *Martin* in Winter, when that our Giſtakers ſhall receive our Pannage. And to theſe two Swanimotes ſhall come our Foreſters, Verderors, Giſtakers, and none other, by Diſtreſs. The three Swanimotes ſhall be kept in the beginning of 15 Days before the Feaſt of St. *John Baptiſt*, when that our Giſtakers do meet to ſawn our Deer:

And at this Swanimote ſhall meet our Foreſters and Verderors, and none other by Diſtreſs. Moreover, every 40 Days throughout the Year, our Foreſters and Verderors ſhall meet to ſee the Attachments of the Foreſt, as well for green Hue as for Hunting by the Preſentment of the Foreſters, and afore them attached. And the ſaid Swanimotes ſhall not be kept but within the Counties in which they have been uſed to be kept.

9. Every Freeman may take Agiſtment in his own Wood, within our Foreſt at his pleaſure, and ſhall take his Pannage. And alſo we do grant, That every Freeman may drive his Swine freely, and without Impediment, through our Demeſne Woods, for to agiſt them in their own Woods, or elſe where they will. And if their Swine tarry one Night and lie within our Foreſt, there ſhall be no Occaſion taken thereof whereby he may leeſe any of his own.

10. No Man from henceforth ſhall loſe neither Life nor Member for killing our Deer; but if any Man be taken therewith, and convict for taking of our Veniſon, he ſhall make grievous Fine, if he hath any thing whereof to make fine; and if he have nothing to leeſe, he ſhall be impriſoned a Year and a Day, and after the Year and Day expired (if he can find ſufficient Sureties) he ſhall be delivered, and if not, he ſhall abjure the Realm.

11. Whatſoever Archbiſhop, Biſhop, Earl or Baron, coming to us at our Commandment, paſſeth by our Foreſt, it ſhall be lawful for him to take and kill one or two of our Deer, by the View of the Foreſter, if he be preſent, or elſe he ſhall cauſe one to blow an Horn for him, that he ſeem not to ſteal our Deer: And likewiſe they ſhall do in returning home from us.

12. Every Freeman from henceforth, without Danger, ſhall make, in his own Wood, or in his Land,

Land, or in his Water which he hath within our Foreſt, Mills, Springs, Pools, Marl-Pits, Dykes or arable Ground, without incloſing the arable Land, ſo that it be not to the Annoyance of his Neighbours.

13. Every Freeman ſhall have, within his own Woods, Airies of Hawks, Sparrow-Hawks, Falcons, Eagles and Herons; and ſhall have alſo the Honey that is found in his Woods.

14. No Foreſter from henceforth (which is not a Foreſter in Fee) paying to us Farm for his Bailiwick, ſhall take Chiminage: But a Foreſter in Fee, paying us Farm for his Bailiwick, ſhall take Chiminage, that is to ſay, for Carriage by Cart, the Half-year, 2 *d.* and for another Half-year, 2 *d.* for a Horſe that beareth Loads, for half a Year, an Half-penny, and for another Half-year, an Half-penny; and but of thoſe only that come as Merchants through his Bailiwick, by his Licence, to buy Buſhes, Timber, Bark, Coal, and in another Place to ſell it again, where they will at their Pleaſure; but for no other Carriage by Cart, Chiminage or Toll ſhall be taken: Nor Chiminage ſhall not be taken but in ſuch Places only where it hath been uſed to be taken. Thoſe who bear on their backs, Bruſh, Bark or Coal to ſell, though it be their Living, ſhall pay no Chiminage to our Foreſters, except they take it within our Demeſne Woods.

15. All that be outlawed of Treſpaſs within our Foreſt ſince the Time of King *Henry* our Grandfather, unto the firſt Year of our Coronation, ſhall come to our Peace without Let; and ſhall find to us Sureties, that from henceforth they ſhall not treſpaſs unto us within our Foreſt.

16. No Conſtable, Caſtellain or Bailiff, ſhall hold Plea of the Foreſt, neither for green Hue, nor Hunting; but every Foreſter in Fee ſhall make

Attachments for Plea of Forest, as well for green Hue as Hunting, and shall present the same to the Verderors of the Provinces. And when they be inrolled and inclosed under the Seals of the Verderors, they shall be presented to our Chief Justices of our Forest, when they shall come thither to hold Plea of Forest, and before them they shall be determined.

Trespassers in Parks. Stat. Merton, Cap. 11. Anno 20. H. 3.

Concerning Trespassers in Parks and Ponds, it is not yet discussed, for the Lords demanded the proper Imprisonment of such as they should take in their Parks and Ponds; which the King denied, wherefore it was deferred.

Westm. 1. *Cap.* 20. *Anno* 3 *Ed.* 1.

It is provided also for Trespassers in Parks and Ponds; That if any be thereof attainted at the Suit of the Party, great and large Amends shall be awarded according to the Trespass, and three Years Imprisonment; and after shall make Fine at the King's Pleasure (if he have whereof) and then shall find good Surety, that after he shall not commit the like Trespass; and if he have not whereof to make Fine, after three Years Imprisonment, he shall find like Surety; and if he cannot find like Surety, he shall abjure the Realm. And if any guilty thereof be Fugitive, and have no Land or Tenement sufficient, whereby he may be justified, so soon as the King shall find it by Inquest, he shall be proclaimed from County to County; and if he come not, he shall be outlawed. It is provided also and agreed, That if none do sue within a Year and a Day for the Trespass done, the King shall have

have the Suit: And such as be found guilty thereof by lawful Inquest, shall be punished in like manner in all points as above is said. And if any such Trespasser be attainted that he hath taken tame Beasts or other things in his Parks by manner of Robbery in coming, carrying or returning; let the Common Law be executed upon him, as upon him that is attainted of open Theft and Robbery, as well at the Suit of the King as of the Party.

Assisa & Consuetudines Foresta, Anno 6. Ed. I.

1. IF any Forester shall find any Man attachable for Vert in the Forest, first he shall attach him by Two Pledges, if they be to be found; if not, he shall be brought to the next Town where they may be found; and if he be afterwards found, he shall attach him by Four Pledges; and if the third Time, he shall be presented before the Verderors, and be put by eight Pledges; after the third Attachment, his Body shall be attached and retained, that he may remember what thing Vert is.

2. It is to be known, That all Trees not bearing Fruit, and those which bear Fruit at any time in the Year, and an Ash, is be old, shall remain in the Forest; and in the arable Land they be all Vert, because our Lord the King is in Possession of them.

3. If any Man shall be found felling an Oak within the Demesne Wood, and within the Regard of the Forest, without the View or Delivery of the Forester or Verderor, he shall be attached by Four Pledges; and by the View of the Verderor, the Oak shall be praised, and the Names of the Pledges

ſhall be written in the Roll of the Foreſters and Verderors.

4. If any Man ſhall be found in the King's Demeſnes, aſſerting or doing Purpreſture, his Body ſhall be forthwith retained, but if without the Demeſnes, within the Regard, he ſhall be put by Six Pledges, and if he be afterwards found, he ſhall double his Pledges, if the third Time, he ſhall retain his Body.

5. If any Man ſhall be found attachable, contrary to his Sureties and Pledges, (that is, after he hath given Sureties not to treſpaſs in the Foreſt, and is afterwards found treſpaſſing there) he ſhall be diſtrained by his Cattle found within the Bounds of the Foreſt; but if he have none, his Body ſhall be detained until he have done that which he ought: and if his abode be without the Bounds of the Foreſt, his Name and the Name of the Town whence he is, ſhall be inrolled.

6. But Delivery of Houſe-bote and Hay-bote ſhall be made as the Wood may ſuffer the ſame to remain in the State in which it is, and not at the Requeſt of the Demandant, neither may he give or ſell any thing of the Wood without the King's Warrant.

7. If any Deer be found dead or wounded, there ſhall be an Inquiſition made by four of the next Villages to the Foreſt, which ſhall be written in the Roll; the Finder ſhall be put by Six Pledges, and the Fleſh ſhall be ſent to a Spittle-Houſe, if, by the Teſtimony of the Verderors and the County, there be any nigh: But if there be no ſuch Houſe near, the Fleſh ſhall be given to the Poor and Lame, the Head and Skin ſhall be given to the Poor of the next Town; and the Arrow, if there be any found, ſhall be preſented to the Verderor, and inrolled in his Roll.

All

All this muſt be intended of ſuch Deer which are not ſweet or fit to be eaten by the better Sort of People; for if a principal beaſt is found newly killed, 'tis not intended by this Statute, that it ſhould be given to an Hoſpital; and if ſuch Beaſt is dead, 'tis the King's Deer, for ſo it was when alive, and the Property is not altered by the killing, and in ſuch Caſe the Juſtice of the Foreſt may diſpoſe it at at his Pleaſure.

8. If any Greyhound or Maſtiff be found running to do any Hurt, the Foreſter ſhall retain them and preſent them in the Preſence of the Verderors, and ſend them to to the King, or to the Chief Juſtice of the Foreſt.

9. If any Maſtiff be found upon any Deer, and ſhall be expeditated, he whoſe Maſtiff he is, ſhall be quit of the Deed; but if he be not expeditated, the Owner of ſuch Maſtiff ſhall be guilty, as if he had given it with his own Hand; and he ſhall be put by Six Pledges, whoſe Names ſhall be written, and alſo what kind of Dog it was.

10. If any Man take a Deer in the Foreſt, without Warrant, his Body ſhall be arreſted whereſoever he be found within the Bounds of the Foreſt; and when he is taken he ſhall not be delivered without ſpecial Command of the King, or Chief Juſtice of the Foreſt.

11. If any ſee any Miſdoers within the Bounds of the Foreſt to carry away any Deer, he ſhall do what he may to take him; and if he cannot, he ſhall levy Hue and Cry, and if he do not ſo, he ſhall remain in the King's Mercy.

12. If any Woodward ſhall ſee Miſdoers within his Wardſhip, or ſhall ſee a dead Wild Beaſt, he ſhall ſhew him to the Chief Foreſter or Verderor; and if he does not, and the Foreſter of our Lord the King find ſuch a Fault in his Wood within the Pre-

Precinct of the Regard, that Wood ſhall be taken into the King's Hands, by the King's Command, or of his Chief Juſtice, and the Woodward is to be attached by Four Pledges.

13. If any Man ſhall have a Wood near unto the Demeſne Wood of our Lord the King, it is lawful for him, after the Demeſne Hedges are agiſted, to have, in the Time of Pannage, ſo many Swine as the Wood may ſuffer, by the View of the Foreſters, Verderors, Regarders and Agiſtors, and other lawful Men; and this ſhall be done of the Profit of Swine.

14. Know ye, That in Time of Pannage, when the Agiſtment ought to be made, the Foreſters, Verderors and Agiſtors ought to crave the Aſſent of the Juſtices of our Lord the King's Foreſt, and ſeek their Good Will; and the Agiſtment ſhall be made as well within the Demeſne Hedges, as without; and the Agiſtment ſhall be made according to their Commandment and Tenor of their Letters, which Letters he ſhall have before the Juſtices of the Foreſt in the next Circuit. And it is commanded, That hereafter be taken for every Hog, as much as may be to the Uſe of the King for Pannage, *viz.* 1*d.* or 2*d.* but of little Pigs, no more than before.

15. If any Man of another County put, or willingly ſuffer, his Cattle to go within the Bounds of the Foreſt, the Foreſter may retain the Cattle by Sureties and ſafe Pledges, which if he cannot do, by the Teſtimony of the Verderors, he ſhall ſhew the Sheriff of the County thereof, that he may make Diſtreſs until he find Pledges; if the Sheriff do it not, the Foreſter ſhall ſhew it to the Juſtices.

16. No Mower ſhall bring with him a great Maſtiff to drive away the Deer of our Lord the King,

King, but little Dogs to look for things without the Coverts.

17. Of these which claim to have Priviledges, as Dogs unlawed, and Greyhounds, within the Bounds of the Forest, there shall be nothing done to them without our Lord the King's Warrant, or his Justices.

18. A Wood remaining in the Hands of our Lord the King, by one Year and a Day, it is in the King's Pleasure, except it be recovered by the Judgment of the Justices.

19. All the Bounds of the Forest are wholly the King's.

20. It is lawful for the Abbot of the Borough of *St. Peter* to hunt and to take Hares, Foxes and Martens within the Bounds of the Forest, and to have unlawed Dogs, because he hath sufficient Warrant thereunto.

21. When Verderors have taken an Inquest, one shall set to his Seal, and the other keep the Roll; and so from time to time till the coming of the Justice: Then the first Day he and all the Ministers shall present the Roll, or else they shall be amerced, and Mainpernors that Day shall be proferred for the Forest, or else they shall incur a Seisure.

22. A Man attached for cutting Boughs, that Plea appertaineth to the Swanimote, before the Steward. And a Man attached for felling an Oak in the Demesne of the King or of any other Man, it belongeth to be tried before the Justice; and if he do it to any Man in the Night-time, he shall be imprisoned.

23. A Man attached to the Swanimote for green Hue, and not presented at the Swanimote, at another time the Presentment shall not hurt him, but shall be taken as a Fault in the Foresters for the Con-

Concealment; and he that is attached, ſhall go quiet by Aſſiſe.

24. If a Foreſter do agree unto an Offence in the Demeſne Woods of the King, the King ſhall take from him his Chief Office, if the Keeper be living: And becauſe the King's Wood is waſted, at every Iter of the Juſtice of the Foreſt, they ſhall pay the King half a Mark.

Anno 21 *Ed.* 1. *Placita Parliament.* 134. *de Malefactoribus in Parcis.*

'UT Maleſactores in Foreſtis, Chaceis & Parcis & Warrenis de cætero plus timeant intrare & maleſacere quàm conſueverunt, Dom. Rex ad Parliamentum ſuum poſt Paſcha Anno Regni ſui viceſimo primo, ad inſtantiam magnatum regni ſui conceſſit & firmiter extunc præcepit obſervari: Quod ſi quis Foreſtarius, Parcarius aut Warrenarius in Balliva ſua Maleſactores aliquos invenirent in Balliva ſua vagantes ad damnum ibidem faciend. & qui Foreſtario, Parcario aut Warrenario poſt clamorem & Huteſium levatum ad partem Regis ſtandum recto reddere noluerint, immo malitiam ſuam perſequendo & continuando & pacem Regis diffugiendo fugam fecerunt, & vi & armis ſe defenderent, licet Foreſtar. Parcar. aut Warrenar. illi ſeu alii quicunque ad Parcem Dom. Regis exiſtentes, & in comitava Foreſtariorum, Parcariorum & Warrenariorum illorum venientes, ad tales Maleſactores ſic inventos arreſtandum ſeu capiendum, aliquem ſeu aliquos hujuſmodi Maleſactorum interfecerint, non propter hoc occaſionentur coram Dom. Rege aut juſtic. ſuis quibuſcunq; aut aliis Ballivis Domini Regis, ſeu aliorum quorumcunq; infra libertatem aut extra; nec propter hoc amittant vitam aut membrum, aut etiam pœnam ſubeant, immo ſir-

'mam

' mam pacem Dom. Regis inde habeant, ſed bene
' caveat Foreſtarius, Parcarius, Warrenarius, &
' alii quicunq; ne occaſione contentionis, diſcordiæ,
' contumeliæ, aut alicujus malevolentiæ ſeu odii
' præhabitorum aliquibus per Ballivas ſuas tranſeun-
' tibus malitioſè imponant quod cauſâ maleſaciend.
' in Ballivis ſuis intrant, cum hoc non fecerint nec
' ipſos vagantes ut maleſaciant, nec maleſacientes
' invenirent, nec cauſa mmaleſaciendi quærentes &
' ſic eos occidant: Quod ſi fecerint, & de hoc
' fuerint convicti, fiat de morte ſic interfectorum
' prout aliorum ad pacem Dom. Regis exiſten-
' tium, & prout de jure, & ſecundum conſuetudi-
' nem Regni fuerint faciend.

Statute, Anno 33 Ed. 1. cap. 5.

WHereas certain People that be put out of the Foreſt for the Purlieu, and, by the Great Men, have made Requeſt to our Sovereign Lord the King, at his Parliament, That they might be acquitted of their Charge and of the Things that the Foreſters demand of them, as they were wont to be. Our Sovereign Lord the King anſwered; Firſt, That where he had granted Purlieu, that he was pleaſed it ſhould ſtand in like Manner as it was granted, albeit the Thing were ſued and demanded in an evil Point. Nevertheleſs he willeth and intendeth, That all his Demeſne Lands, whereſoever they be, that have been of the Crown, being returned by way of Eſcheat or otherwiſe, ſhall have Eſtate of free Chaſe and free Warren, and in ſuch Manner ſhall be ſaved and kept to his Uſe for all manner of Eſcheats, and for all manner of Things that pleaſeth him. And in right of them that have Lands and Tenements diſafforeſted for the ſaid Purlieu, and ſuch as demand to have Common within the Bounds of Foreſts, the

Intent

Intent and Will of Our Sovereign Lord the King is, That from henceforth, where Purlieu is, they may claim to be quit of Charge of the Foreſts. And whereas the King's Beaſts cannot have their Haunt and Repair upon the Foreſt Ground as they had ſo long as they were within the Foreſts, that ſuch Folk ſhall not have Common nor other Eaſement within the Bounds of the Woods, nor of the Lands the which remain in Foreſt. But if any of them that be diſafforeſted by the Purlieu, would rather be in the Foreſt as they were before, than to be out of the Foreſt as they now are, it pleaſeth the King very well, That they ſhall be received thereunto, ſo that they ſhall remain in their antient Eſtate, and ſhall have Common and other Eaſement as well as they had before. Whereupon our Sovereign Lord the King willeth and commandeth, That his Juſtices of the Foreſts on this ſide *Trent*, and beyond *Trent*, in like manner, ſhall keep and hold and cauſe to be kept and holden ſtraitly, the aforeſaid Points within their Liberties.

Anno 33 *Ed.* 1. *Placita Parliament.* 279.

WHereas ſeveral People have been put out of the Foreſt by the Perambulations; and by the King's Grant have petitioned this Parliament, That they might be diſcharged of all thoſe Things which were formerly demanded of them by the Foreſters; The King anſwered, That after he had granted the Perambulations, it was his Pleaſure, that it ſhould be as he had granted, and as it ought to be, without demanding any thing, or, at leaſt, he intended it ſo; but that all his Demeſne Lands, whether they were thoſe which were antiently in the Crown, or which came by way of Eſcheat, or in any other Manner, ſhould be free Chaſes and free Warrens, and

ſhould

ſhould be held and kept as ſuch for his own Uſe, and all the Woods therein, in ſuch manner for ever after as he pleaſed.

And as concerning the Right of thoſe whoſe Lands and Tenements were diſafforeſted by the ſaid Perambulation, and who claimed Common within the Bounds of the Foreſt, it was his Pleaſure and Intention, That ſince, after the Perambulation, they claimed to be diſcharged of ſeveral Duties; and ſince the King's Beaſts could not now repair to thoſe Lands as formerly, they being now out of the Foreſt by the Perambulation, therefore they ought not to have any Common or any other Eaſement within the Boundaries, or in the Woods or Lands which are in the Foreſts: But if thoſe who have been diſafforeſted by the Perambulation had rather be again within the Foreſt than without, as they are now, it is the King's Pleaſure that it ſhould be ſo, and that they ſhall enjoy their former Eſtates and Commons, and other Privileges in the Foreſts as uſually they have done; wherefore the King commands the Juſtices of the Foreſt, both of this ſide and beyond *Trent*, that they keep and obſerve, or cauſe to be kept and obſerved, theſe Things in their Bailiwicks, and in this Manner.

Ordinatio Foreſtæ, made *An.* 34. *Ed.* 1.

1. FIrſt, we have decreed for our ſelves and our Heirs, That of Treſpaſſes hereafter to be done in our Foreſts of green Hue and Hunting, the Foreſters within whoſe Bailiwicks ſuch Treſpaſſes ſhall happen to be committed, ſhall preſent the ſame at the next Swanimote, before the Foreſters, Verderors, Regarders, Agiſtors, and other Mi-

Miniſters of the ſame Foreſt; and upon ſuch Preſentment there before the Foreſters, Verderors, and all other Miniſters aforeſaid, by the Oath as well of Knights, as of other honeſt Men, of the neareſt Parts where the Treſpaſs ſo preſented ſhall be done, not ſuſpected, by whom the Truth of the Matters may be fully inquired of; and the Truth ſo inquired of, the Preſentments ſhall be ſolemnly affirmed and ſealed with their Seals, by the common Agreement and Aſſent of all the Miniſters aforeſaid; and if the Indictment be made otherwiſe, it ſhall be void.

2. And if it happen, that any of the ſaid Foreſters, Regarders, or other Miniſters of the ſame Foreſt to die, or by Sickneſs, or by any other Means to be hinder'd, by reaſon whereof, he cannot be preſent at ſuch Swanimote, immediately the Juſtice of the Foreſt, or his Lieutenant, ſhall put another in his Place, ſo that the Indictment may be made by all in Form aforeſaid; and that the Officers which are to be placed, be placed as hitherto it hath been accuſtomed to be done, ſaving the Verderors which ſhall be appointed by Election, and by our Writ. And we will, that none of the aforeſaid Miniſters hereafter be put in any Aſſiſes, Juries or Inqueſts to be taken within the Foreſts.

3. And if any Surcharge be found of the Foreſters, or other, which have to do as Miniſters of the Foreſt, ſuch Surchargers ſhall be amoved, and ſhall be impriſoned according to the Diſcretion of the Juſtice of the Foreſt, or his Lieutenant. And they alſo by whom they were placed there, ſhall be puniſhed likewiſe at our Pleaſure. And at every Swanimote it ſhall be inquired of the Surcharge of the Foreſters and other Miniſters of the Foreſt, and of their Oppreſſions brought upon our People, and they ſhall make thereof Amends, and ſhall be

puniſh'd as above is expreſs'd. And as concerning thoſe Perſons which, ſince the Time that the Foreſt was diſafforeſted, have committed Offences in Vert and Veniſon within the Foreſt, to diſafforeſt the ſame; and that the Sentence of Excommunication was publiſh'd againſt the ſame Offenders, though the ſame, by our good Will, ſhould not have proceeded; which Sentence the Pope himſelf afterwards revok'd, and which Grants and diſafforeſting, for certain Cauſes, we do revoke and make void. For we will, That thoſe Offenders be pardoned, except thoſe Offences which are committed in that Part which doth remain ſtill Foreſt; ſo that the Hedges and Ditches that were made in the mean time, ſhall be thrown down and removed, and utterly avoided; ſaving unto us our Rents, which we will have to remain according to the Aſſiſes of the Foreſt.

4. The Wood which is cut and fell'd, ſhall be removed, and the Wood ſtanding ſhall remain in the Foreſt; and if, by chance, any ſuch Wood yet ſtanding be ſold, it ſhall remain in the Foreſt, and the Seller ſhall ſatisfy the Buyer according to the Quantity of the Portion of the Wood ſtanding in the Foreſt, and ſo of Wood ſold in the mean time, and even as he ſhall take of the ſame Buyer.

5. We will alſo, That the Juſtice of our Foreſt, or his Lieutenant, in the Preſence of our Treaſurer, and by his Aſſent, have Power to take Fines and Redemptions of them which are indicted of Treſpaſſes commited in the Foreſt; before this time, not inquired of in the Juſtices Circuit.

6. We will moreover, That they which have had Common of Paſture in the Foreſt, before Perambulation made, and they which afterwards were deny'd in the Foreſt, and they which have been letten of the ſaid Common by the Perambulation aforeſaid, ſhall have their Common of Paſture,

from henceforth, in the Foreſt, as largely and freely as they were wont to have before the Perambulation aforeſaid; ſaving our Rents in Form aforeſaid. *Teſte apud W.* 28 *Maii.*

Statutes made in the Reign of *Ed.* 3.

Anno 1 *Ed.* 3. *Cap.* 8.

WHereas divers People be diſinherited, ranſomed and undone by the chief Keepers of the Foreſt on this ſide *Trent*, and beyond, and by other Miniſters, againſt the Form of the Statute of the Great Charter of the Foreſt, and againſt the Declaration made by King *Ed.* Son of King *Henry*, in Form following, that is to ſay: We will and grant, for us and our Heirs, That for any Treſpaſs done in the Foreſt, of Vert and Veniſon, that the Foreſters in whoſe Bailiwick ſuch Treſpaſs ſhall be committed, ſhall preſent the ſame Treſpaſſes at the next Swanimote, before the Foreſters, Verderors, Regarders, Agiſtors, and other Miniſters of the ſame Foreſt: And that ſuch Preſentment be made before the ſaid Foreſters, Verderors, Regarders and Agiſtors, and other Miniſters aforeſaid, as well by the Oaths of Knights, as by other diſcreet and lawful Men, and not ſuſpicious of the Parties joining near where ſuch Offences ſhall be preſented, and where the Truth may beſt and moſt clearly be known; and the Truth perfectly known, then ſuch Preſentments by the common Aſſent and Conſent of all the ſaid Miniſters, ſhall be ſolemnly written, and with their Seals inſealed: And if any Indictment be in any other Manner made, the ſame ſhall be void. And therefore becauſe the Chief Wardens of the Foreſt have not obſerved

the

the ſame hitherto, it is agreed and ordain'd, That henceforth no Man ſhall be taken nor impriſoned for Vert or Veniſon, unleſs he be taken *with the Manner*, or elſe indicted after the ſame Form before ſpecified.; and then the Chief Warden of the Foreſt ſhall let him to mainprize till the Eyre of the Foreſt, without any thing taken for his Deliverance. And if the ſaid Warden ſhall not do ſo, he ſhall have a Writ out of the Chancery, which hath been in old time ordained for ſuch Perſons indicted to mainprize till the Eyre. And if ſuch Warden, after he hath received the Writ, do not incontinently deliver ſuch Perſons indicted to Mainprize, without taking any thing, then the Plaintiff ſhall have a Writ out of the Chancery to the Sheriff, to attach the ſaid Warden to be before the King at a certain Day, to anſwer wherefore he hath not replevied him that is ſo taken. And the Sheriff (the Verderors being called to him) ſhall deliver him that is ſo taken by good Mainprize in the Preſence of the Verderors; and ſhall deliver the Names of the Mainpernors to the ſame Verderors to anſwer in the Eyre of the Juſtices. And if the Chief Warden be thereof attainted, the Plaintiff ſhall recover his treble Damages, and the ſaid Warden to be committed to Priſon, and ranſomed at the King's Will. And from henceforth it ſhall be written to them as to the Chief Wardens of the Foreſt, becauſe they may not be Juſtices, nor to have any Record.

§ *Note*, Taken *with the Manner*, in the laſt Statute mentioned, is in 4 Sorts for Veniſon, *viz. Stable-ſtand*, *Dog-draw*, *Bloody-Hand*, and *Back-bear*. And 2 Sorts for Vert, *viz.* Cutting it, and carrying it away.

Anno 1 *Ed.* 3. *Cap.* 2.

Every Man that hath any Wood within the Foreſt, may take Houſe-Boot and Hay-Boot within his ſaid Wood, without being attached for the ſame by any Officer of the Foreſt, ſo that he do it by the View of the Foreſters.

By the Statute of 1 *Ed.* 3. *cap.* 8. before mentioned, it appears, That the Chief Warden of the Foreſt is not a *judicial* but a *miniſterial* Officer, becauſe, by that Statute, if he refuſe to bail an Offender in *Vert* or *Veniſon*, the Party grieved ſhall have a Writ out of Chancery, directed to the ſaid Warden to bail him; which Writ, if he do not immediately obey, then the Party ſhall have another directed to the Sheriff to apprehend the Warden himſelf.

Anno 3 *Ed.* 3. *Cap.* 1.

That the great Charter of the Liberties, and the Charter of the Foreſt be obſerved and kept in every Article: And that the old Perambulations of the Foreſt in the Time of King *Ed.* Grandfather to the King, that now is, be from henceforth holden in like Form as it was then ridden and bounden: And thereupon a Charter to be made to every Shire where it was ridden and bounden; and in ſuch Places where it was not bounden, the King will, that it ſhall be bounden by good Men and lawful, and that a Charter be thereupon made as aforeſaid.

Anno

Anno 25 *Ed.* 3. *Cap.* 7. *Stat.* 5.

No Foreſter nor Keeper of Foreſt or Chaſe, nor none other Miniſter, ſhall make or gather Suſtenance, nor no other Gathering of Victuals, nor other thing, by Colour of his Office, againſt any Man's Will, within their Bailiwick nor without, but that which is due of antient Right.

Anno 7 *R.* 2. *Cap.* 3.

NO manner of Jury ſhall be, from henceforth, compelled by any Miniſter of the Foreſt, to travel from Place to Place out of the Places where their Charge is given to them againſt their Gree, nor by Malice, nor by Menace, or other Dureſs, conſtrained to ſay their Verdict of a Treſpaſs done in a Foreſt otherwiſe than their Conſcience will clearly inform them; but they ſhall ſay their Verdicts upon their Charge in the Places where the Charge is given them, as above is ſaid.

Anno 7 *R.* 2. *Cap.* 4.

That no Man be taken or impriſoned by any Miniſter of the Foreſt, without due Indictment or by Manovery, or Treſpaſſing, in the Foreſt, or elſewhere; nor ſhall not be conſtrained to make any Obligation or Ranſom to any Miniſter of the Foreſt, by any manner againſt their Gree and the Aſſiſe of the Foreſt: And if any do againſt this Ordinance in any point, and thereof be attainted, he ſhall pay to the Party damnified, their double Damages, and Fine and Ranſom to the King for his Offence.

Anno 22 *Ed.* 4. *Cap.* 7.

IF any of the King's Subjects, having Woods of his own, growing in his own Ground, within any Foreſt, Chaſe or Purlieu of the ſame, within this Realm of *England*, ſhall cut or cauſe to be cut, the ſame Wood or part thereof, by Licence of the King or his Heirs, in his Foreſts, Chaſes or Purlieus, or, without Licence, in the *Foreſt*, Chaſe or Purlieu of *any other Perſon*, or make any Sale of the ſame Wood: It ſhall be lawful to the ſame Subject, Owner of the ſame Ground whereon the Wood ſo cut did grow, and to other ſuch Perſons to whom ſuch Wood ſhall happen to be ſold, immediately after the Wood ſo cut, to coppy and incloſe the ſame ground with ſufficient Hedges able to keep out all manner of Beaſts and other Cattle out of the ſame Ground for the Preſervation of their young Spring: And the Hedges ſo made, the ſaid Subjects may keep them continually by the ſpace of ſeven Years next after the ſame incloſing, and repair and ſuſtain the ſame as often as it ſhall need within the ſame ſeven Years, without ſuing of any other Licence of the King, or of his Heirs, or other Perſons, or any of their Officers of the ſame Foreſts, Chaſes and Purlieus.

Note, Two Things are to be obſerved upon this Statute, *viz.* 1ſt, That a common Perſon might have a Foreſt, which appears by theſe Words in the Statute, *viz.* If any one cut Wood in the King's Foreſt, with his Licence, or in the *Foreſt* of *any other Perſon*, without Licence, he may incloſe the Ground on which the Wood did grow, *&c.*

2d, This Statute being made in the Negative of the Common Law, ſhews, That before it was made, a Man could not incloſe his own Grounds where he had cut any Wood in a Foreſt, without Leave from the King, or ſome Officer of the Foreſt; but now he might not only incloſe it, but keep it incloſed for ſeven Years, without any manner of Leave from any Perſon whatſoever.

Anno 32 H. 8. cap. 13. *The Statute for the Drift of Foreſts, and what Beaſts are not Commonable in the Waſte of the Foreſts.*

NO Commoner or Commoners within any Foreſt, Chaſe, Moor, Marſh, Heath, Common, or Waſte Ground, nor any Officer or Officers of or within any of the ſaid Foreſts or Chaſes, nor any other Perſon or Perſons whatſoever he or they be, at any time after the laſt Day of *March*, which ſhall be in the Year of our Lord, 1543. ſhall have or put to Paſture, into or upon any ſuch Ground, Foreſt, Chaſe, Moor, Marſh, Heath, Common or Waſte Ground, any *Stoned Horſe* or Horſes, being above the Age of *Two Years*, and not being of the Altitude and *Height* of *Fifteen Handfulls*, to be meaſured from the loweſt part of the Hoof of the Fore-foot, unto the higheſt part of the Wither, and every *Handfull* to contain *Four Inches* of the Standard, to paſture, feed, or be in or upon any of the ſaid Foreſts, Chaſes, Commons, Moors, Marſhes, Heaths, or Waſte Grounds, within any of the Shires and Territories of *Norfolk*, *Suffolk*, *Cambridge*, *Bucks*, *Huntingdon*, *Eſſex*, *Kent*, *South Hampſhire*, *North-Wiltſhire*, *Oxford*, *Berks*, *Worceſter*, *Glouceſter*, *Somerſet*, *North-Wales*, *South-Wales*,

Wales, *Bedford*, *Warwick*, *Northampton*, *Yorkſhire*, *Cheſhire*, *Staffordſhire*, the County of the City of *York*, the Town and Liberties of *Glouceſter*, the County of the Town of *Kingſton upon Hulll* the County Palatine of *Lancaſter*, the Counties of *Salop*, *Leiceſter*, *Hereford* and *Lincoln*, or within any of them; nor ſhall put to feed or paſture any *Stoned Horſe* or Horſes, being above the ſaid Age of two Years, and not being of the Altitude or *Height* of *Fourteen Handfuls*, to be meaſured, as aforeſaid, within or upon any *like Ground* or Grounds, as been above written, lying or being in *any other Shire* of this Realm, nor within any of them, upon pain of *Forfeiture* of the ſaid *Horſe* or Horſes which ſhall be found in or upon any ſuch Ground, Foreſt, Chaſe, Moor, Marſh, Heath, Common or Waſte Ground, at any time after the ſaid laſt Day of *March*, which ſhall be in the Year of our Lord, 1543. contrary to the Form of this Statute.

And that it ſhall be lawful to every Perſon and Perſons that ſhall find any ſuch Horſe or Horſes contrary to the Form of this Statute, to ſeize the ſame in Manner and Form following; that is to ſay, The Perſon or Perſons ſo finding any Horſe or Horſes contrary to this Act, in any Foreſt, Chaſe, Common, Moor, Marſh, Heath, or Waſte Ground within the ſaid Shires, or other Limits aforeſaid, or in any of them, ſhall firſt go unto the Keeper or Keepers of the ſame Foreſt or Chaſe, or to his Deputy or Deputies, or to the Conſtable, Bailiff, Headborough, Burſholder or Tithing-man, of any Townſhip next adjoining unto the ſaid Place where the ſaid Horſe or Horſes ſhall be; and ſhall command or require him or them, in the King's Behalf, to go with him or them to bring every ſuch Horſe or Horſes as he or they ſhall think to be there feeding, or going

contrary to this Statute, to the next Pound; and there the ſaid Horſes to be meaſured by any of the ſame Officer or Officers in the Preſence of three other honeſt Men, to be named and appointed by the ſaid Officer; and if it be ſo found, that the ſame Horſe or Horſes be contrary to this Act, that then it ſhall be lawful to every ſuch Perſon and Perſons that ſhall ſo challenge and ſeiſe the ſame, to take and retain the ſame Horſe or Horſes, and every of them, to his own Uſe, as his proper Goods and Chattels for ever, without Let, Interruption Vexation, Suit or Trouble of the Owner or Owners of them or any of them, or any other Perſon or Perſons.

And it is further Enacted by the Authority aforeſaid, That if any of the ſaid Keepers, their Deputy or Deputies, Bailiffs, Conſtables, Headboroughs, Burſholders or Tithing-men, or any of the ſaid three other honeſt Men which ſhall be required to be at the ſaid Meaſuring of the ſaid Horſe or Horſes, as is aforeſaid, do refuſe to do as is aforeſaid, or elſe do not truly meaſure ſuch Horſe and Horſes; that then every ſuch Bailiff, Keeper, Deputy or Deputies, Conſtable, Headborough, Burſholder and Tithing-man, and the ſaid three honeſt Perſons to be named as aforeſaid, and every of them, not doing, or refuſing to do his or their Duty in the Premiſſes, ſhall forfeit 40 *s.* for every time ſo refuſing to do, or not doing as is aforeſaid, the one half thereof to the King, and the other half thereof to the Party that will ſue, *&c.* in which Action no Eſſoin, *&c.*

Provided always, That this Statute ſhall not extend to any *Stoned Horſe* or Horſes that ſhall happen once in every Year after the ſaid laſt Day of *March*, to break, eſcape or go out of any ſeveral Paſture or Ground againſt the Will and Mind of the

the Owner or Poſſeſſor of ſuch Horſe or Horſes, into any of the ſaid Foreſts, Chaſes, Moors, Marſhes, Heaths, Commons, or Waſte Grounds, ſo that the ſaid Horſe or Horſes ſo breaking, eſcaping or going out, do not remain or abide in the ſaid Foreſts, Chaſes, Moors, Marſhes, Heaths, Commons or Waſte Grounds, or any of them, by the ſpace of four Days next after ſufficient and open Notice and Knowledge given at the Dwelling-houſe of the Owner of the ſaid Horſe or Horſes, or after any Publication thereof made upon a Sunday or other Feſtival Day, in the Pariſh-Church where the Owner or Poſſeſſor of ſuch Horſe doth dwell.

And be it Enacted, *&c.* That all Foreſts, Chaſes, Commons, Moors, Marſhes, Heaths and Waſte Grounds, within this Realm of *England* and *Wales*, and the Marches of the ſame, and every of them, ſhall be driven at the Feaſt of St. *Michael the Archangel* next coming, or within fifteen Days then next after, and ſo yearly to be driven by the Lords, Owners or Poſſeſſors of the ſaid Foreſts, and Chaſes, or by the Officers of the ſame, and by the Conſtables, Headboroughs, Bailiffs, Burſholders and Tithing-men, within whoſe Offices, Precincts and Limits the Commons, Moors, Marſhes, Heaths and Waſte Grounds, being out of the Foreſts and Chaſes, be or lie, upon pain of 40 *s.* to be forfeited to our Sovereign Lord the King, by every of the ſaid Officers, Bailiffs, Conſtables, Headboroughs, Burſholders and Tithing-men, as often and at every time as the ſaid Driſt ſhall be omitted or left undone, or not effectually done, within fifteen Days after the ſaid Feaſt of St. *Michael* the Archangel, as is aforeſaid.

And it ſhall be lawful alſo to the ſaid Lords, Owners and Poſſeſſors of the ſaid Foreſts and Chaſes,

by

by their Officers of the ſame, and to the Conſtables, Bailiffs, Headboroughs, Burſholders and Tithing-men, and every of them, within the Limits of their Offices, to make like Drift of the ſaid Foreſts, Chaſes, Commons, Moors, Marſhes, Heaths and Waſte Ground, at any other Seaſon and Time of the Year whenſoever, and as often as they ſhall think meet and convenient.

And furthermore, be it enacted, That if, in any of the ſaid Drifts, there ſhall be found any *Mare*, Filly-fole, or Fole, or Gelding that then ſhall be thought not able to bear Foles of reaſonable Stature, or not able nor like to grow to be able to do profitable Labours by the Diſcretion of the Drivers aforeſaid, or of the more Number of them, then the ſame Driver or Drivers ſhall cauſe the ſame unprofitable Beaſts, and every of them, to be killed, and the Bodies of them to be buried in the Ground, or otherwiſe beſtowed, as no Annoyance thereby may come or grow to the People there near inhabiting or thither reſorting.

And it is further enacted, *&c.* That the Juſtices of Peace in every their Riding, and other Place, in their Quarter-Seſſions to be kept and holden by vertue of the King's Commiſſion of the Peace to them directed; and all Stewards of Leets and Law-Days, ſhall have Authority, by this Act, to inquire of all Defaults, Contempts, Omiſſions and Offences contrary to the Effects above written, and every of them; and all Preſentments thereof to be found in any of the ſaid Leets and Law-Days, ſhall be certified by the Steward or Deputy-Steward, or Court-holder of the ſame Leet or Law-Day, in the next General Seſſions of the Peace to be holden in the County where ſuch Preſentment ſhall be found or had, or unto the *Cuſtos Rotulorum* of the ſame Shire, within forty Days next after the Pre-

Preſentment made; which Juſtices of the Peace, in their Quarter-Seſſions of the Peace, ſhall have Power and Authority by this Act, to hear and determine every ſuch Preſentment before themſelves found, or in any of the ſaid Leets or Law-Days, to be preſented and certified as is aforeſaid, as well by Examination as otherwiſe: And if any ſuch Steward, Deputy-Steward, or Court-holder aforeſaid, imbezil or conceal any ſuch Preſentment, or do not certify the ſame as is before written, every of them ſo offending ſhall forfeit and loſe for every ſuch Offence, 40 *s.* the one half of every ſuch Forfeiture, and of every other the Forfeitures aforewritten, to be to the King, and the other half to the Perſon or Perſons that will ſue for the ſame before the ſaid Juſtices of Peace in their ſaid Quarter-Seſſions, by Bill or Information, which Juſtices ſhall have full Power and Authority, by virtue of this Act, to hear and determine every ſuch Offence as well by Examination as otherwiſe, as is before-mentioned.

And be it further enacted, *&c.* That no Perſon or Perſons after the Feaſt of St. *Michael* the Archangel next coming, ſhall have or put to Paſture any Horſe, Gelding or Mare infected with Scab or Maunge, in, to, or upon any of the ſaid Foreſts, Chaſes, Moors, Marſhes, Heaths, Commons, Waſte Grounds, or Common Fields, upon pain to forfeit, for every Horſe, Gelding or Mare ſo infected, paſturing in any of the ſaid Grounds, Ten Shillings; which Offence ſhall be inquired and preſented before the Steward in every Leet as other Common Annoyances be: And the Forfeiture therefore to be to the Lord of the ſaid Leet where the ſaid Offences ſhall be preſented.

Provided always, That this Act or any thing therein contained, ſhall not extend or be pre-

prejudicial to any Perſon or Perſons having any *Stoned Horſes* under the Heights and Altitudes above-mentioned, for or concerning the having or puting any of the ſaid Horſes to feeding in or upon any Common or other Waſte Grounds where any Mares or Fillies be not uſed or ſuffered to be fed, paſtured or kept.

This Statute doth not extend to the Fens in *Ely*, nor to the Counties of *Cambridge*, *Huntingdon*, *Northampton*, *Lincoln*, *Norfolk* and *Suffolk*; ſo that the Horſes there kept in Commons, *&c.* are not under thirteen Hands high, 8 *Eliz. cap.* 8. Nor to the County of *Cornwal*, 21. *Jac. cap.* 28.

Scabbed or infected Horſes ſhall not be put in Commons, in pain to forfeit 10*s.* to the Lord of the Leet.

Anno 32 H. 8. cap. 35. *That the Juſtice in Eyre may make a Deputy.*

From henceforth all and every Juſtice and Juſtices of the King's Foreſts, Parks and Chaſes within this Realm, which now be, or hereafter ſhall be, by their Writing, ſealed with their Seal of Office, ſhall make, aſſign, depute and appoint as many Deputy or Deputies, for the exerciſing of the ſame Office of the Juſtice or Juſtices of the Foreſts, as to ſuch Juſtice or Juſtices, from time to time, ſhall be thought convenient: Which Deputy and Deputies ſo appointed, ſhall have like Power and Authority to do and execute all things concerning the King's Foreſts, Parks and Chaſes, and all other things concerning the Office and Offices of the Juſtices of the Foreſts, to all Intents and Purpoſes, and in as large and ample Manner and Form as the ſame Juſtice or Juſtices might

might or may lawfully do or execute by the Laws of this Realm, and as though the ſame Juſtice or Juſtices were there perſonally preſent in his or their own Perſon or Perſons.

By the Common Law, before the making this Statute, the Juſtice of the Foreſt being a Judicial Officer could not make a Deputy; but by this Law he was enabled to make one in Manner as thereby directed.

Anno 17 Car. 1. cap. 16. *An Act about the Boundaries*, &c. *of Foreſts.*

WHereas by an Act of Parliament, made in the Firſt Year of the Reign of the late King *Ed.* 3. it is ordained, That the old Perambulation of the Foreſt, in the Time of King *Ed.* 1. ſhould be, from thenceforth, holden in like Form as it was then ridden and bounded; and in ſuch Places where it was not bounded, the King would, that it ſhould be bounded by good Men and lawful.

And whereas for many Ages paſt certain *Meets*, *Meers*, *Limits* and *Bounds* of Foreſts have been commonly known and obſerved in the ſeveral Counties wherein the ſaid Foreſts lie.

And whereas of late divers Preſentments have been made, and ſome Judgments given, whereby the ſaid *Meets*, *Meers*, *Limits* and *Bounds* of ſome of the ſaid Foreſts have been variouſly extended, or pretended to extend beyond ſome of the ſaid *Meets*, *Meers*, *Limits* and *Bounds* ſo commonly known, and formerly obſerved, to the great Grievance and Vexation of many Perſons having Lands adjoining

to

to the ſaid *Meets, Meers, Limits* and *Bounds* ſo commonly known and formerly obſerved.

And whereas, of late time, ſome Endeavours or Pretences have been to ſet on foot Foreſts, in ſome parts of this Realm, and the Dominion of *Wales*, where, in truth, none have been or ought to be, or at leaſt have not been uſed of long Time: For Remedy thereof, may it pleaſe your Majeſty, That it may be declared and enacted by Authority of Parliament,

And be it delared and enacted by the King's moſt excellent Majeſty, and the Lords and Commons in this Parliament aſſembled, and by the Authority of the ſame, That from henceforth the *Meets, Meers, Limits* and *Bounds*, of all and every the Foreſts reſpectively, ſhall be, to all Intents and Purpoſes taken, adjudged, and deemed to extend, no farther reſpectively, than the *Meets, Meers, Limits* and *Bounds* within the ſeveral Counties reſpectively wherein the ſaid Foreſts lie, were commonly known, reputed, uſed or taken to be the *Meets, Meers, Limits* and Bounds of *the ſaid Foreſts* reſpectively, in the Twentieth Year of the Reign of our late Sovereign Lord King *James*, and not beyond, in any wiſe, any Perambulation, or Perambulations, Extents, Surveys, Judgments, Records, Decrees, or other Matter or Thing whatever, to the contrary notwithſtanding.

And that all and every the Preſentments ſince the ſaid 20th Year made, and all and every other Preſentment and Preſentments, and all and every Judgment and Award upon or by Reaſon or Pretext of any ſuch Preſentment or Preſentments, and all and every Perambulation and Perambulations, Surveys, Extents, and other Act and Acts, at any time heretofore had or made, by which the *Meets, Meers, Limits* and *Bounds* of the ſaid Foreſts,

reſts, or any of them, are or are pretended to be farther extended than as aforeſaid; and alſo all and every Preſentment of any Perſon or Perſons at any *Juſtice-Seat*, *Swanimote*, or Court of Attachments, for or by reaſon or by colour of any Act or Acts whatſoever, done or committed in any place without or beyond the ſaid *Metes*, *Meers*, *Limits* or *Bounds* reſpectively, ſo commonly known, reputed, uſed or taken as aforeſaid; and all and every Fine and Fines, and Amerciament and Amerciaments upon, by reaſon or colour of any ſuch Preſentment or Preſentments, ſhall be, from henceforth, adjudged, deemed and taken to be utterly void and of no Force or Effect, any Law, Statute, Record or Pretence whatſoever, to the contrary notwithſtanding.

And be it further enacted by the Authority aforeſaid, That no Place or Places within this Realm of *England*, or Dominion of *Wales*, where no ſuch *Juſtice Seat*, *Swanimote*, or *Court of Attachments*, have been held or kept, or where no *Verderors* have been choſen, or *Regard* made within the ſpace of *Sixty Years* next before the Firſt Year of his Majeſty's Reign, that now is, ſhall be at any time hereafter, judged, deemed or taken to be *Foreſt*, or within the Bounds or Meets of Foreſt. But the ſame ſhall be, from henceforth for ever hereafter, diſafforeſted, and freed and exempted from the Foreſt-Laws; any Juſtice-Seat, Swanimote or Court of Attachment held or kept within or for any ſuch Place or Places at any time or times ſince the beginning of his Majeſty's ſaid Reign; or any Preſentment, Inquiry, Act or Thing heretofore made, or hereafter to be made or done, to the contrary notwithſtanding.

Provided alſo, and be it further enacted by the Authority aforeſaid, That for the better putting

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into Certainty all and every the *Meets*, *Meers*, *Bounds* and *Limits* of all and every the Foreſts, as aforeſaid, the Lord Chancellor or Lord Keeper of the Great Seal of *England*, for the time being, ſhall, by vertue of this Act, upon Requeſt of any of the Peers of this Kingdom, or of the Knights and Burgeſſes of the Parliament, or any of them, grant ſeveral Commiſſions under the Great Seal of *England*, to Commiſſioners to be nominated reſpectively by the ſaid Peers, Knights and Burgeſſes, or any of them, to inquire of and find out, by Inqueſts of good and lawful Men, upon Oath, and by the Oaths of Witneſſes to be produced at the ſaid Inqueſts, and by all other lawful Means, all and every the *Meets*, *Meers*, *Bounds* and *Limits* of the ſaid Foreſts reſpectively, which were commonly known to be their Meets, Meers, Bounds and Limits reſpectively, in the ſaid 20th Year of the Reign of our late Sovereign Lord King *James*, and to return the Inqueſts ſo taken into the Court of Chancery. And that all and every the Sheriffs and Bailiffs of and in every County wherein any ſuch Inqueſts ſhall be ſo to be taken, and all and every the Verderors, Foreſters, Rangers, and other Officers of the Foreſts reſpectively, where any ſuch Officers be, ſhall be aſſiſtant and attendant to the Execution of the ſaid Commiſſions, according as by vertue of the ſaid Commiſſions reſpectively they ſhall be commanded; and where no ſuch Officers are, or where ſuch Officers be, if they or any of them ſhall refuſe or neglect ſuch Aſſiſtance and Attendance, as aforeſaid, then the ſaid Commiſſioners ſhall and may proceed without them in the Execution of the ſaid Commiſſions.

And be it further enacted by the Authority aforeſaid, That the Foreſts whereof the Meets, Meers, Limits and Bounds ſhall be ſo returned and certified by vertue of any the ſaid Commiſſions as aforeſaid, from henceforth, ſhall not extend, nor be extended, nor be deemed, adjudged or taken to extend, any farther in any wiſe than the Meets, Meers, Limits and Bounds that ſhall be ſo returned and certified; and that all Places and Territories that ſhall be without the Meers, Meets, Limits and Bounds ſo returned and certified, ſhall be, and are hereby declared to be, from thenceforth free to all Intents and Purpoſes, as if the ſame had never been Foreſt, or ſo reputed; any Act or Acts, Matter or Thing whatſoever, to the contrary notwithſtanding.

Provided, and be it further enacted by the Authority aforeſaid, That all and every the Grounds, Territories or Places which have been or are diſafforeſted, or mentioned to be diſafforeſted, in or by any Letters Patent, Charters or otherwiſe, ſince the ſaid twentieth Year of the Reign of our ſaid late Sovereign Lord King *James*, ſhall be excluded and left out of the Meets, Meers, Limits and Bounds of the Foreſts, which are to be inquired of, returned and certified by vertue of the ſaid Commiſſions, or any of them reſpectively; and ſhall be and are hereby declared and enacted to be utterly diſafforeſted, free and exempt to all Intents and Purpoſes, as if the ſame had never been at all Foreſt, or ſo reputed: Any Thing in this preſent Act contained, or any other Act, Matter or Thing whatſoever, to the contrary in any wiſe notwithſtanding.

Provided nevertheleſs, and be it enacted, That the Tenants, Owners and Occupiers, and every of them, of Lands and Tenements which ſhall be

be excluded and left out of the Meets and Meers, Limits or Bounds of the Foreſts, to be returned and certified by vertue of any of the ſaid Commiſſions, ſhall or may uſe and enjoy ſuch Common or other Profits and Eaſements within the Foreſts, as antiently or accuſtomably they have uſed and enjoyed: Any Thing in this preſent Act contained, or any Act or Ordinance made in the 33d Year of King *Edward* the Firſt, or any Cuſtom or Law of the Foreſt, or any other Matter or Thing to the contrary thereof notwithſtanding.

THE TABLE.

A.

A Buſer of a Grant, a Cauſe of Forfeiture, Page 133.

Ager. Difference between *Ager diviſus*, *Aſſignatus* and *Arciſinius*, 43.

Agiſtment, Derivation and Signification of the Word, p. 1. The two Sorts of *Agiſtment*, 2. Signification of the Word *Agiſtment*, according to Mr. *Hesket*, 2. Who may agiſt their Cattle in the King's Woods, 3, *& ſeq.* That none can have *Agiſtment* for all manner of Beaſts, but only for ſuch as are commonable, 3. That the King's Demeſne Woods and Lands, muſt always be agiſted by his Foreſters and Verderors, 3. *Agiſtments* muſt be entered in the Verderor's Roll, 4. If any Stranger agiſt his Cattle in the King's Foreſt, the Beaſts are forfeited, and ſhall be ſeized for the King's Uſe, 5. But not ſo of the Beaſts of an Inhabitant within the Bounds of the Foreſt, *ibid.* But if ſuch an Inhabitant agiſt the Beaſts of Strangers, it is an Offence fineable to the King, 6. Form of the Entry of the Record of that Offence, *ibid.* Who may agiſt the Woods and Lands of private Men, *ibid.* When the

Time of agiſting the King's Foreſts begins and ends, p. 7. *Agiſtment* for Maſt may be of Beaſts not commonable, and when ſuch *Agiſtment* begins, 8. Of the Time of agiſting the Woods and Lands of private Men, 9, 10. That all Men who have Woods and Lands in the Foreſt may agiſt them at all Times of the Year, 9. Except their Woods and Hedg-rows adjoining to thoſe of the King, 10. And not with the Cattle of Strangers without Licence, *ibid.* Except it be with their Swine for the Pannage, 11

Agiſtors. How conſtituted, and in what his Office conſiſts, p. 1, 2. How many there are in each Foreſt, 1. Why they are called the King's *Agiſtors*, 2. That there may be Foreſts where there are no *Agiſtors*, 11.

Allowance, (Writ of) in what Caſes granted, 79, 80.

Amerciament, See **Diſtreſs.**

Antlers, Royal and Sur-royal, of an Hart, 181.

Appearance at the Juſtice-Seat, p. 12, *& ſeq.* Who muſt appear in proper Perſon, and who may by Attorney, Guardian, *&c.* 15, 16, 17, 18. The Pledges or Sureties for a Man's *Appearance* muſt appear as well as the Defendant, 17. And if they appear, and the Defendant does not, they ſhall be impriſon'd, *ibid.*

Apples; No Felony to take them, whilſt growing in an Orchard, p. 215. But otherwiſe if gather'd by the Owner, *ibid.*

Aſſart, Derivation of the Word, p. 19. What is meant by *Aſſarts* of the Foreſt, or Lands aſſarted, 19, 20. Difference between an *Aſſart* and a Waſte of the Foreſt, 20. The Forfeiture and Puniſhment of a Man's aſſarting his own Woods and Lands in the Foreſt, 20, 21, 22. That the Laws of the Foreſt appoint no certain Fine for that Offence, 21; and therefore 'tis arbitrary

at the Diſcretion of the King or Ch. J. in Eyre, p. 21. Difference between aſſarting the King's Woods and Foreſts and thoſe of other Men, *ibid.* The Puniſhment or Forfeiture of aſſarting the King's Lands, 22. Aſſarting in the Foreſt not bailable, 34.

Aſſiſæ & Conſuetudines Foreſtæ, made *An.* 6 *Ed.* 1. page 407.

Aſſiſes of the Foreſt of *Lancaſter* and *Pickering* are in the Nature of Year-Books to the Foreſt-Laws, 205.

Attachment, (Court of) Of what Matters it takes Cogniſance, p. 23. That it is only a Court of Enqueſt, and can not proceed to Conviction, 23, 24. When and how often this Court is to be kept, 24. Why call'd *The Forty Days Court*, *ibid.* That they cannot proceed judicially, except the Treſpaſs be under the Value of 4 *d.* p. 24, 25.

Attachment. Of the ſeveral kinds of *Attachments* of the Foreſt, p. 26, *& ſeq.* Of *Attachments* by Goods and Chattels, 26. By the Body, Pledges and Mainpriſe, 27. By the Body only without Pledges or Mainpriſe, 28. The ſix ſeveral Sorts of Offences in Foreſts, for which Offenders may be ſo attached, 28, 29, 30. That no Man who is to be attached by the Body only, can be bailed by any Officer of the Foreſt, except by the King's ſpecial Command, or by the Lord Chief Juſtice in Eyre, 30, 31.

B.

Back-bare, what, p. 193.

Bail and Mainprize. Difference between them, p. 32. Form of the Entry of admitting a Man to Bail, 32, 35. How and before whom a Perſon may be bailed, 33, 34. That a Man

may be bailed by Vertue of the Writ *De homine replegiando*, Page 35.

Beadle, an Officer of the Foreſt, and what his Buſineſs, 36.

Beam of a Buck or Hart, 48, 181.

Beaſts. What are accounted *Beaſts* of the Foreſt, and what of the Chaſe, 144, 160. Privilege of *Beaſts* of the Foreſt, 145. Difference between *Beaſts* of the Foreſt and *Beaſts* of Chaſe, 160, 161. What *Beaſts* may be agiſted in the King's Foreſts, and what not, 337.

Bloody-hand, what, 193.

Boundaries of the Foreſt, p. 31, *& ſeq.* That they are unremoveable, 37. How they are known, 38, 39. Difference between the Words, *Meets*, *Meers*, and *Boundaries*, 39. That it is neceſſary to know the *Limits* or *Boundaries* of the Foreſt, and why, 39, 40. That all the *Bounds* and *Meers* of the Foreſt belong to the King, 41, 42. That the Bounds of a Foreſt are to be according to the Peramulation, 43.

Branch of a Buck, what, 48.

Bridges in Foreſts, p. 47, 48. That they ought to be repaired by the Lord in whoſe Manor they are, *ibid.*

Brow-Antler or **Bezantler** of an Hart, what, 181.

Buck, the firſt Beaſt of Chaſe, p. 48; Its different Names, *ibid.* Its Seaſon, *ibid.* Terms of Hunting, *ibid.*

Bunda, ſee **Boundaries**. The Meaning of the Word, p. 38, 39. Whence it is derived, *ibid.*

Bur of a Buck or Hart, what, 48, 181.

C. *Canis*,

C.

Canis, Signification of the Word in the Laws of the Foreſt, Page 112. That the Words *Canis* and *Maſtivus* are Synonymous, *ibid.*

Caſes in Law relating to Foreſts.

Caſe of the Prior of St. *John* of *Jeruſalem*, 22.
——of *Gilbert de Acton*, *ibid.*
——of the Abbot of *Whitby*, 41.
——relating to the Meets and Bounds of the Foreſt of *Waltham*, 44, 45, 46.
——of the Biſhop of *Winton & al.* 46.
——of *Cliſton*, for carrying away and ſelling Timber-Trees, 47.
——of *Halſtead*, for not repairing *Lodden* Bridge, 47, 48.
——of Sir *Edmund Sawyer*, 86.
——of the Burgeſſes of *Lancaſter*, 90.
——of the Burgeſſes of *Preſton*, 90.
——of the Prioreſs of *Wickham*, 93.
——of *Blanchard*, *ibid.*
——of the Grantee of *Stow*-Park, 97.
——of the Prior of *Lancaſter*, 98.
——of the Dean and Chapter of *Salisbury*, *ibid.*
——of *George Taterſal*, 90.
——of the Prior of *Lancaſter*, 132.
——of Sir *Charles Howard*, 133.
——of Sir *Richard Cromwel*, 157.
——of *Aſhton*, 186.
——of the Dutcheſs of *Norfolk*, 187.
——of the Earl of *Suffolk* againſt *Barney* and *Whitley*, *ibid.*
——of the Lord *Beaumont*, 188.
——of the Earl of *Arundel*, 196.
——of the Abbot of *Whitby*, 197.
——of *Thomas Cary*, 200.

Caſe

Caſe of the Earl of *Lancaſter* and *John Harrington*, Page 201.
——of *Nicholas Melvill* and others, 214.
——of the Biſhop of *Lichfield* and *Coventry*, 228.
——of *Chriſtian Smith* and others, 306.
——of *Thomas Brown*, 307.
——of Sir *John Binn*, 330, 331.
——of the Lady *Villars*, 332.
——of *Gibbons*, 352.
——of *Griſell* and Sir *Thomas Leigh*, 365.
——of the Inhabitants of *Egham*, 377.
——of *Oakley*, 383.
——of *Moor*, *ibid.*
——of *Rapley*, *ibid.*
——of *Cliſton*, 384.
——of the Tenants of *Warfield*, *ibid.*
Charge given to the Jury at the Juſtice-Seat, 65 to 78.
——at the Swanimote Court, 340 to 345.
Charta de Foreſta of King *Canutus*, made at *Wincheſter*, *A. D.* 1016. p. 393 to 402.
Charta de Foreſta, made *Anno* 9 *H.* 3. p. 402.
Chaſe. Difference between a *Chaſe* and a Park, p. 147. That 'tis not lawful for any Man to make a *Chaſe*, Park or Warren, in his own Freehold without the King's Grant or Warrant, 148, 204. The Reaſon thereof, 204. In what a *Chaſe* differs from a Foreſt, 49. Beaſts of *Chaſe*, what, 50. Difference between Beaſts of *Chaſe* and Beaſts of the Foreſt, *ibid.* That a Man may have a *Chaſe* in a Foreſt, 51. That the Owner of a Warren in a *Chaſe* cannot make new Borows, unleſs he have Warren there by Grant, 86.
Chief Juſtice in Eyre, his Office and Dignity, p. 57. His Authority, 58. That he is created by Patent, 64. That he is a Judicial Officer, and yet may make a Deputy, 337.

Claims in Foreſts, p. 79, 80, 81, 82. False *Claims*, how puniſhed, 81. Trials of *Claims*, before whom decided, *ibid.*

Common in Foreſts, p. 82 to 99. Who ſhall have *Common* there, and who not, 83. What *Common* is, and why it is ſo called, 84. That there are four Sorts of *Common* by the Common Law, 85. *Common* Appendant, what, *ibid.* *Common* Appurtenant, what, *ibid.* That no Man can have *Common* Appurtenant in a Foreſt for Beaſts that are not commonable, *ibid.* *Common* in Groſs, what, 86. *Common* by Vicinage, what, *ibid.* Who ought to have *Common* in a Foreſt, 89. What Beaſts are commonable in a Foreſt, and what not, 93. That Preſcription to have *Common* is an equitable Preſcription, 99.

Conies, Beaſts of Warren, p. 362. Puniſhment for taking them, 364, 365. That they are *feræ naturæ*, and therefore the Lord hath no Property in them when out of the Warren, 365.

Corn growing on the Ground, if taken and carried away, not Felony, 215. But otherwiſe if it be firſt cut down by the Owner, *ibid.*

Coventry and *Lichfield*, (Biſhop of) his Petition againſt the Juſtices of the Foreſt for a free Chaſe, and Judgment thereon, 51 to 56.

Coverts, what, p. 370. Difference between *Coverts* and Woods, 371.

Court of Attachment, ſee **Attachment**.

——of Swainmote, ſee **Swanimote**.

D.

Deer, See **Doe**. Taking them in a Foreſt is but a Treſpaſs, p. 215. But if killed by the Foreſter, and afterwards carried away by another, 'tis Felony, *ibid.* A Perſon taken in the Manner, either hunting, chaſing or killing a *Deer*,

Deer, may be impriſon'd; but ſhall be bail'd upon finding ſufficient Sureties, Page 34, 35.
Deer-Pays, Puniſhment of keeping them, 106.
Deer-ſtealing, forbid by ſeveral Statutes, 104, *& ſeq*
Diſtreſs, p. 99, *&c.* Who may be compelled to appear by *Diſtreſs*, 99. How the *Diſtreſs* to be taken, 100.
Doe, its ſeveral Names, p. 103. Its Seaſon, *ibid.*
Dogs. Who may keep *Dogs* in a Foreſt, p. 107, 124, *& ſeq.* What *Dogs* may be kept in a Foreſt, 109. Of expeditating of *Dogs* in a Foreſt, 111. What *Dogs* ſhall be expeditated, 112. and by whom, 114.
Dog-draw, what, 193.
Drifts of the Foreſt, p. 127. At what Time of the Year the Foreſt ſhall be driven, *ibid.* How often in every Year, 129. Why Foreſts are driven, 130. By whom they are to be driven, 131. How the *Drifts* are to be made, *ibid.* In what Places of the Foreſt, 132. And of what Cattle, *ibid.*

E.

Emma, Mother of *Edward* the Confeſſor, try'd *per Ordelium* for the Death of her Son, 397.
Eſcapes in Foreſts, ſee **Amerciaments**.
Eſtovers, ſee **Woods** in Foreſts, p. 388. How a Man may have *Eſtovers* in a Foreſt, 133.
Exchequer, (Court of) their Order relating to Woods and Trees growing in Foreſts, 372.
Expeditating of Dogs, p. 111. Why ſo called, 123. What Dogs ſhall be expeditated, 112. By whom, 114. In what Manner, 116. In what Places, 117. Forfeiture for keeping Dogs not expeditated, 119. Who ſhall be chargeable with the Forfeiture, and in what Manner, *ibid. & ſeq.*

Extortion. Seven ſeveral Sorts of *Extortion* committed formerly by Officers of Foreſts, page 166, *& ſeq.* That no Act done *virtute Officii* can be *Extortion*, tho' if it be done *colore Officii* it may, 168.

F.

Fence-Month, p. 134, *& ſeq.* When the *Fence-Month* firſt began to be kept, 135. When it begins and when it ends, 136. Duty of the Officers of the Foreſt, during that Time, 136.

Fiſh taken in a River, not Felony, p. 215. But Felony if taken in a Trunk, *ibid.*

Folkmote, 336.

Footgeld, the Meaning of it, 109.

Foreſt. The Original and Antiquity of *Foreſts*, p. 139, *& ſeq.* What a *Foreſt* is, and whereof it conſiſts, 143. Proper Signification of the Word *Foreſt*, 144. How a *Foreſt* is known from other Lands, 145. Difference between a *Foreſt* and a Chaſe, 147. That a *Foreſt* comprehends a Chaſe, a Park and a Warren, 147, 148. Of the Prerogative of the King to make *Foreſts* where he pleaſeth, 148, 149. In what Places *Foreſts* ſhould be made, 149, 150. Why it is called a *Foreſt*, 151. What Benefit accrues to the King by the Preſervation of *Foreſts*, 152. Who may make a *Foreſt*, 153. Whether a Subject may have a *Foreſt*, *ibid.* How a *Foreſt* may be granted by the King to a Subject, 155. When a *Foreſt*, granted by the King to a Subject, ſhall ſtill be a Chaſe, 156. Which are Beaſts of *Foreſt*, and the Difference between them and Beaſts of Chaſe, 160.

Foreſters. Their Office, 33, 163, *& ſeq.* Why they can not take Bail, *ibid.* Oath of a *Foreſter*, 162. How that Officer is created, 163. That his Authority is like that of a Sheriff of a County, 166. That a Woman may be a *Foreſter* in Fee,

Fee, and though she cannot execute the Office, may make a Deputy, Page 221.

Forms of several Entries in the Courts of the Forest.

Form of the Entry of the Record for the Offence of agisting the Cattle of Strangers in the King's Forest, p. 6.

——of the Entry of admitting a Man to Bail, 32, 35.

——of making Claim to a Wood that lies *infra Metas Forestæ*, but out of the Regard of it, 43.

——of the Precept of the Chief Justice in Eyre to the Sheriff of the County, to summon all Persons to appear at the Justice Seat, 61, 62.

——of a general Summons directed to the Chief Warden of the Forest, 63, 64.

——of an Indictment for Offences in the Forest, 203. See Offenders.

——of Presentments in the Court of Attachment, 237.

——of Presentments in the Court of Swanimote, 239.

——of the Writ directed to the Sheriff of the County to summon the whole Regard of the Forest, 318.

——of the Writ to choose a Verderor, 349.

——of an Indictment for committing Waste in a Forest, 367, 368.

——of a Writ of *Ad quod damnum*, directed to the Chief Warden of the Forest, or his Deputy, in order to impower a Man to fell his Wood and Timber in the King's Forest, 381.

——of Entries in the Assises of *Pickering*, relating to the felling of Trees in Forests, 387.

Forty Days Court, see Court of Attachments.

Fox, a Beast of Chase, p. 160, 173. Tho' not accounted so by King *Canutus*, 161. Season of Hunting the *Fox*, 174. Proper Terms belonging to the *Fox*, *ib.*

G. Game-

G.

Game-keeper. That there must be but one in a Manor, and that his Name must be entered with the Clerk of the Peace, p. 177.
Geese may not be agisted, and why, 7.
Goats may not be agisted, and why, *ibid.*
Greyhounds forbid to be kept in a Forest, 110.

H.

Halimote, 336.
Hambling of Dogs, what, p. 111. Why so called, 123.
Hampton-Court Forest, when made, p. 174. called *The Honour of Hampton-Court*, 175.
Hare, a Beast of Forest and of Warren, p. 175. called the King of all Beasts of Venery, 176. Season of Hunting the *Hare*, *ibid.* Terms of Hunting, and others, *ibid.* Punishments inflicted by several Statutes for hunting, killing and selling of *Hares*, 176, 177, 178. Officer or Soldier killing a *Hare* without Leave of the Lord of the Manor, how punished, 177.
Hart, a Beast of the Forest, p. 178. Why called *Cervus* in Latin, *ibid.* Its several Names, 179. That there are three Sorts of *Harts*, *ibid.* Why sometimes called a *Hart-Royal*, and *Hart Proclaimed*, *ibid.* *Hart* proclaimed by King *Richard* the First, 180. The Time of Grace or Season of a *Hart*, *ibid.* Proper Terms belonging to a *Hart*, *ibid.*
Havering Park. That it is *infra Metas Forestæ de Waltham*, but out of the Regard of it, 43.
Hay-bote, see Prescription.
Heath, burning it in a Forest, fineable, 117.
Herbage. That Common of *Herbage* is Matter of Agistment, 5.

Feiles. His Opinion concerning the proper Signification of the Word *Agistment*, p. 9. Confirm'd by the Book of Entries, *fol.* 545. p. 2, 3. And by the Book of Assises, 3. And by *Dyer*'s Reports, *fol.* 80. *Plac.* 56. p. 3.

Hind. The several Names, Season of Hunting, and Terms proper to a *Hind*, 181.

Horse. What *Horses* are not common in a Forest or Chase, 130.

House-bote, see *Prescription.*

Howard (Sir *Charles*) fined and committed at the Justice Seat for disrespectful Words, 78, 79.

Hue and Cry of the Forest, how made, and for what, p. 182, 183. Neglect in pursuing the *Hue and Cry*, how punished, 182, 184. That a Felon may be pursued with *Hue and Cry*, but not a Trespasser, 216. Nor without the Bounds of the Forest, *ibid.*

Hunting in Forests, punishable by Death by the Laws of *Edward* the Confessor, p. 115. But that Punishment was taken away by the Statute called *Charta de Forresta*, 176. The Antiquity of *Hunting*, 184. Who may *hunt* in the King's Forests, 184, 185, 186. Of Licences and Warrants to *hunt* in the Forests, and how they must be used, 186. Who may grant Warrants to *hunt* in a Forest, and who not, 188. The Difference between Warrants of Pleasure and Warrants of Profit, 189. That he who abuseth his Warrant, is a Trespasser *ab initio*, 191. How such as *hunt* without Leave shall be punished, 192. How far a Purlieu-man may pursue his Chase in *Hunting*, 194, *&c. seq.*

I.

Inclosures in a Forest, p. 199, 201, 202. That a Chief Justice in Eyre may grant a Licence to inclose Ground in a Forest, 199. But such *Inclosures* must be made with low Hedges, *ibid.*

Except

Except they be of Woods and Coverts, which may be inclosed with high Hedges, p. 200. That Parks laid open to Forests may be inclosed again, ibid. Punishment of inclosing Land in a Forest without Leave, 202. Causes of Seisure for *Inclosures*, 200, 201.

Imprisonment, good Form thereof, 205.

—of the Abbot of *Whitby* for killing a Hart in the River *Derwent*, *ibid.* That an *Indictment* at the Justice-Seat is traversable, but not one at the Court of Swanimore, 239.

Infants impleaded before the Chief Justice in Eyre, may appear either by Guardian or *Prochein Amy*, 17.

Jury, see *Stat.* 7 *R.* 2. page 421.

Justice-Seat. That before the making *Charta de Foresta*, all Men within the County were bound to appear at the *Justice-Seat*, p. 12. The Manner of holding that Court, and what Offences are punishable there, 64, *& seq.* That it can not be held oftner than once in three Years, 64 Charge to be given to the Jury at the *Justice-Seat*, 65 to 78.

K.

KING. His Prerogative to make Forests where he pleases, p. 148, 149, 204. That he can not make a Forest but by Matter of Record, 59. That before the making of *Charta de Foresta*, the *King* punished Offenders in Forests as he thought fit, 205. What Benefit accrues to the *King* by Forests, 152. That the *King* may grant a Forest to a Subject, 155. That a Forest so granted shall not be a Chase, 156.

L

Lancaster (Earl of) had a Forest in the Counties of *York* and *Lancaster*, and executed the Forest-Laws there, p. 205.

Lancaster (Prior of) punish'd for a false Claim, &c.

Lawing of Dogs, what, 111.

Laws of the Forest, in what they consist, p. 146, 205. Why called Particular *Laws*, *ibid.* That they appoint no certain Sum as a Fine for Affairs of the Forest, 21. That they extend not to Chases, 117. That the *Laws* of the Forest are both general and particular, 205. That the *Laws* of the Forest always differ'd from the Common *Law* 206.

Leet, That a Man may prescribe to hold a *Court-Leet* more than twice a Year, 334.

Lespegard, Signification of the Word, 194.

Licence to hunt in a Forest, the Difference between a *Licence* in Law and a *Licence en fait*, p. 190. That he who abuseth his *Licence* is a Trespasser *ab initio*, 191. How Hunters without *Licence* shall be punished, 192. See Warrant.

Lucy (*Jeffrey*) a great Lord, amerced for not appearing at the Justice-Seat, 15.

M.

Mainprize, see Bail. Difference between *Mainprise* and Bail, p. 32. What *Mainprise* is, 33.

Manner. *Taken with the Manner*, what, p. 193. Punishment thereof, *ibid.* See Hunting.

Mastetheses, House-Dogs so called, and why, 113. *Mediocres homines*, 316.

Meers of the Forest, see Bounnaries. Difference

rence between *Meers*, Meers and Boundaries, p. 39. That all the *Meers* of the Foreſt belong to the King, 41, 42.
Meria, Signification of the Word, and whence it is derived, p. 39. See Meers of the Foreſt.
Meers of the Foreſt, ſee Boundaries.
Meta. What is meant by the Word *Meta*, p. 37, 39. Whence it is derived, 39. Difference between Meers, Meers, and Boundaries, *ibid.* Difference between *infra Metas Foreſtæ* and *infra Regardum Foreſtæ*, 42, 43.
Mittimus, Meaning of the Word 395.
Mowbray. His Opinion of Agiſtment, 3.

N.

NObleмen, not bound to appear at the Juſtice-Seat in Perſon, but by Attorney, 14.
Non-uſer of a Liberty granted in a Foreſt, is a good Cauſe of Seiſure, p. 93. So likewiſe of Fairs, Markets, Courts, and ſuch like Liberties, 236. But not of Parks or Warrens, *ibid.*
Nuſances in a Foreſt, what, p. 207. That there are three Sorts of them, 207, 208, 209. Who are to inquire of *Nuſances* in the Foreſt, 209. How the *Nuſances* ſhall be remedied, and in what manner the Offenders ſhall be puniſhed, 209, 210, 211. Difference between *Nuſance* at Common Law and *Nuſance* of the Foreſt, 211.

O.

OAth to be taken by the Inhabitants of the Foreſt, 78.
Oath of a Foreſter, 162.
—— of a Ranger, 313.
—— of a Regarder, 319.
—— of a Verderor, 347.

The TABLE

Offenders in Forests p. 210, &c. How they be apprehended, 212. That in some Cases Offenders in Forests may be guilty of Felony, 216.
Officers of the Forest, as returned by the Sheriff upon a Writ of Summons to the Justice-Seat, 218, 219, 220.
Officers of the Forest, who necessary, 217. That there are six Sorts of them, 217. What they have Cognizance of all Offences and Trespasses in the Forest, ibid.
Ordelings, 396, 397.
Order, made by the Court of Exchequer relating to Woods and Trees growing in Forests, 372.
Ordinatio Forestæ, made Anno 34 Ed. 4. p. 414.
Outlawry. That Offenders in Forests may be prosecuted by way of Outlawry, 223, 224, 244.

P.

Pannage, Signification of the Word, 394. Pannage, what, and whence so called, p. 227, 228, 229. Of the Time of Pannage in the King's Woods, and who is to receive it, 228. Of the Time of Pannage of other Mens Woods in the Forest, and who is to receive it, 230, 231. The Difference between Pannage and Agistment, 228. Claim to be quit of Pannage, and Waive Pannage, 229.
Parks in Forests p. 224, 225, 226. That no Man can lawfully make a Park in his own Freehold without the King's Leave or Warrant, 198. The Reason of it, 204. That Parks laid open to Forests may be inclosed again, 200. That a Man may have a Park in a Forest by Grant or Prescription, 201.
Perambulation (Writ of). That the Subject may demand such a Writ de jure, and the King can not in Justice deny it, p. 45. But no Man can de-

a new *Perambulation de jure*, tho' the King may grant one *de Gratia*, 256.
Disafforestation of the Forest of *Waltham*, 148, to 155.
——— of the Forest of *Windsor*, 255 to 291.
Pigeons taken abroad, not Felony, p. 215. But otherwise if taken in a *Pigeon-Houle*, *ibid.*
Postnote, 536.
Prescription, whether a Man may prescribe to sell Wood in a Forest, without the View of the Foresters, p. 232, 233, 234. That a Man may prescribe to hold a Leet more than twice a Year, 234. *Prescription* to have *Strays* in gross, not good, 235. To hunt in a Purlieu, not good, *ibid.* For House-bote and Hay-bote, good, *ibid.* To have Common in a Forest, good, *ibid.* To a Warren in a Forest, or to any Thing that goes to the Destruction of the Vert or Venison, not good, without an Allowance in Eyre, *ibid.*
Presentments, p. 237 to 242. That *Presentments* are made by the Foresters in the Court of Attachments, 237. Form of them, *ibid.* Method of Proceeding thereon, *ibid.* Method of Proceeding on *Presentments* in the Court of Swainmote, 238. Form of such *Presentments*, 239. Difference between the Form of a *Presentment* in the Swainmote, and in the Court of Attachements, 240. That every *Presentment* for an Offence in Vert or Venison must be certain in respect of the Place, Person, Thing, Instruments, Manner of the Act, and Value of the Vert, 240, 241, 242.
Purgatio Ignis, 396.
Purlieu, Why so called, and what it is, p. 242. That the *Purlieu* and Pourallee are distinct Things, *ibid.* How *Purlieus* first began, 243. That the *Purlieu*, in some Sort, is Forest still, 291, 292, 293. How and for whom the *Purlieus*

lieu is free to hunt in, p. 293 to 296. When and how often a *Purlieu-man* may hunt in the *Purlieu*, 296 to 300. How and where Offenders may be in a *Purlieu*, are to be punished, 300. Difference between a Forest, a *Purlieu*, and Land that never was Forest, 300, 301. How far a *Purlieu-man* may pursue his Chase in Hunting, 294, &c. *seq.*

Purpresture, why so called, p. 302. What is meant by a *Purpresture* in the Forest, 304, 305, 306, 307. How many Sorts of *Purprestures* there are, 307, 308, 309. The Forfeiture and Punishment of those who commit *Purprestures* on the King's Lands, 309. The Punishment of him who commits a *Purpresture* on his own Lands, 310. Difference between *Purprestures* and Assarts, 311, 312. *Purprestures* in the Forest not bailable, 34.

R.

Ranger, why appointed, p. 313. By whom made, his Office, Oath and Authority, 314, 315.

Regarder of the Forest, p. 315 to 331. How many *Regarders* there must be in a Forest, 317. How and in what manner the *Regarders* are made, *ib.* Oath of a *Regarder*, 319. The three Sorts of *Regarders*, 320. The Office and Duty of a *Regarder*, 321 to 329.

Regardum Forestæ. Difference between *Infra Regardum Forestæ* and *Infra Metas Forestæ*, p. 42, 43, 329. That Places may be within the Forest, but out of the Regard of it, 43.

Rivers in Forests. That they are the immemorable Boundaries of them, p. 327. That no Man may fish in them without a Warrant for that purpose,

Abbot of *Whitby* indicted for killing a Hart in the *River Derwent*, ibid.
Skins of the Forest, 331 to 334.

S.

St. *John* (Prior of) fined for agisting the Beasts of Strangers in the King's Forest, 6.
Sanctuaries in a Warren in a Forest; a Cause of Seising, 200, 201.
Scandal, what, p. 168. That it is an Extortion *colore Officii*, but not *virtute Officii*, ibid. See also 330, 335.
Sheep may not be agisted, and why, 71.
Sheep-silver, 335.
Single of a Buck, what, 48.
Spaniels forbid to be kept in a Forest, 110.
Spenser (Hugh de) Chief Justice in Eyre, 43.
Stable-stand, what, 193.
Staff-herding, why not allowable in a Forest, 98.
Stalking with Bush or Beast in a Chase, Warren or Park, how punished, 213, 214.
Statute. The Statute *de Malefactoribus in parcis* extends not to a Forest, p. 60. That there is a Difference between a Negative *Statute* that is only declaratory of the Common Law, and one that is introductory of a New Law, 233, 234.

Statutes relating to Forests.

Charta de Foresta, of King *Canutus*, made at *Winchester*, *A. D.* 1016. p. 393 to 402.
Charta de Foresta, *Anno* 9 *H.* 3. p. 402.
Assisa & Consuetudines Forestæ, *Anno* 6 *Ed.* 1. p. 407.
Ordinatio Forestæ, *Anno* 34 *Ed.* 1. p. 415.

THE TABLE
7 R. 2. p. 421. of 22 [illegible]
Statute for the Drift of Forests, and what Beasts are not commonable in the Waste of the Forest, made *Anno* 32 *H* 8. p. 423.
An Act about the Boundaries, &c. of Forests, made *Anno* 17 *Car.* 1. p. 430.
Summons (general) to appear at the Justice-Seat, *post*, 62. Who upon a General Summons are bound to appear at the Justice-Seat, and who not, 21, *&c.* That Noblemen must not appear in Person, but by Attorney, 24. See *Justice*.
Surcharger of the Forest, p. 94. Who is said to be a Surcharger, 95. Punishment of a Surcharger by the Laws of the Forest, 96.
Swainmote. Derivation of the Word, 133. Swainmote Court. At what Times appointed to be held, and why, p. 4, 7. That the Verderors are Judges of this Court, and not the Chief Warden or his Deputy, 136, 137. How often in a Year the Swainmote shall be held, and what Officers and others are to attend, 138. Charges to be given in this Court, 140 *&c.*

T

Territory, a proper Word to express a Forest, p. 124.
Thorp. His Opinion of Agistment, 9.
Timber-trees. Meaning of the Words, 53. Timber-trees cut down in a Forest, and punishable only by *Charta de Foresta*, p. 139. That in Purlieus the Forest-trees are Principals, 214.
Trespass in Parks, 406.

Tryal.

Vavasor, Adam de, Earl of Penrith, Chief Justice in Eyre, 430.
Vension. What is *Venison*, p. 348. Whence the Word is derived, ibid. Of the general and special Signification of it, 347. Venison, p. 25. That they are Judges of Records, and therefore may take Bail, p. 33. Why they ought to be Men of Learning in the Laws of the Forest, ibid. Declaration of the Word *Venison*, 348. What a Verderor is, how made, Form of his Oath and his Office, 348 to 353. Vert. Derivation of the Word, and what is so called, p. 354, 355. How many Sorts of *Vert* there are, and the Punishment for cutting it, 356, 357. What shall be said to be *Vert* in the King's own Woods, 357, 358. What shall be accounted *Vert* in the Woods of common Persons, 359, 360.
Vigia of a Buck, what, 48.
Visnet (continued) is the Strength and Support of all Customs and Prescriptions, 1962.

W.

Wards, what, 139.
Walcote in *Essex*, within the Forest of *Waltham*, yet no Part of it, 43.
Warrants, p. 360, 361, 362. Who may grant *Warrants* to hunt in a Forest, and the like, 188. Difference between *Warrants* of Pleasure and *Warrants* of Profit, 289. That he who shooteth his *Warrant* to hunt, is a Trespasser, 291.

War-

Warbuttis dict. Who may [illegible] excuse their Appearance at the Justice-Seat, p. 13.

Warren, what it is, and what are Beasts and Fowls of *Warren*, p. 362, 363. That *Warrens* in Forests are either by Grant or Prescription, 363. That it is not lawful for any Man to make a *Warren* in his own Freehold without the King's Grant or Warrant, 148. Salaries in a *Warren*, a Cause of Seizure, 200, 201.

Warren in a Chase. The Owner cannot make new Borrows, unless he have *Warren* there by Grant, p. 86. The Reason thereof, 204.

Waste in Forests, p. 366 to 370. Whence the Word *Waste* is derived, 366. Difference between *Waste* at Common Law, and *Waste* by the Laws of the Forest, *ibid.* Difference between Destruction and *Waste*, 367. The Forfeiture and Punishment of those who commit *Waste* in the Forests, 368, 369. Things specially to be considered in an Indictment for *Waste*, 369.

Westminster (Abbot of) amerced for not appearing at the Justice-Seat, 15.

Whitby (Abbot of) indicted for killing a Deer in the River of *Derwent*, 411.

Wolf, a Beast of Forest, p. 160. Not accounted so by King *Canutus*, who almost destroyed them, 161.

Woodmote-Court, the Court of Attachments formerly so called, p. 24. See Court of Attachments.

Woods in Forests, p. 370 to 389. Necessity of them, 370. Difference between *Woods* and Coverts, *ibid.* Resolutions of all the Judges of *England*, in the Reign of King *James* I. relating to *Woods* and Trees growing in the King's Forests, 371, 372. Order of the Court of Exchequer made on those Resolutions, 372. How Men may

The TABLE.

may cut down *Woods* in their own Lands in the King's Forests, page 381. Lord Chief Justice in Eyre cannot license a Man to cut down his own *Woods* within the Forest, 146. That but not some *Woods* are with the Bounds of the Forest, Part of it, 43.

Woodwards, an Officer of the Forest so called, and his Office and Duty, 389, to 393.

Words (abusive) punishable by the Justice Seat, 78.

Writ of Summons and Return thereof by the Sheriff, of the Officers of the Forest, to the Justice Seat, 218, 219, 220.

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The TITLE.